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FEDERAL RAILROAD ADMINISTRATION'S RAIL SAFETY ACTIVITIES AUTHORIZATIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

FRA RAIL SAFETY ACTIVITIES AUTHORIZATIONS

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FEDERAL RAILROAD ADMINISTRATION'S RAIL SAFETY ACTIVITIES AUTHORIZATIONS

FRIDAY, MARCH 9, 1984

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room SR-253, the Russell Senate Office Building, Hon. John C. Danforth (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Pamela Garvie, staff counsel, and Linda Morgan, minority staff counsel.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. The chief purpose of today's hearing is to examine the effectiveness of the Federal Railroad Administration's (FRA) railroad safety efforts and to consider appropriate funding to support these efforts. FRA's safety responsibilities include:

First, developing and implementing regulations to improve railroad safety; second, enforcing safety statues and regulations; and third, conducting research and development aimed at enhancing safety.

During today's hearing, we also will consider the administration's legislative proposal to end funding for the State participation program. This is a joint Federal-State program pursuant to which the participating States enforce Federal railroad safety regulations. In turn, the Federal Government pays 50 percent of the State safety inspectors' salaries and expenses. Thirty-two States now participate in this program, including my own State of Missouri.

Finally, we will consider a series of amendments to the Federal railroad safety laws proposed by railroad labor.

We look forward to the testimony of today's witnesses. I also want to invite other interested individuals and groups to submit statements for the hearing record. The record will be open for 2 weeks to receive such written statements.

Senator Hollings has an opening statement for the record at this time.

[The statement follows:]

OPENING STATEMENT BY SENATOR HOLLINGS

Today the Committee is reviewing the activities of the Department of Transportation in the important area of rail safety. I am encouraged by the commitment which the Federal Railroad Administration (FRA) has made to ensuring effective rail safety regulations and enforcement, and in this regard I take particular note of

FRA's stated goal to undertake two or three safety initiatives each year. I also applaud the steps which the rail industry has taken on its own initiative to improve its safety record, particularly in the areas of employee training training and hazardous materials. The improved rail safety record in recent years indicates these important commitments.

The Committee will also be hearing from representatives of rail labor, whom I applaud for its significant and continuing efforts in working with industry and FRA to improve safety regulation. Rail labor is proposing six amendments relating to equipment inspections, grade crossing safety, employee standing to compel inforcement, car coupling, sleeping quarters, and punitive damages for employees discriminated against. I am interested in labor's elaboration on the need for legislation in these areas, particularly as some of these issues historically have been matters for collective bargaining, or have been reviewed by FRA, or introduce a new dimension to the safety laws. I am also interested in the response of industry and FRA to these amendments. Because of the significant efforts and concerns of rail labor in the rail safety area, I am submitting some questions for the record on labor's proposals for change.

Senator DANFORTH. Our first witness is John Riley, the Administrator of the FRA.

STATEMENT OF HON. JOHN H. RILEY, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, ACCOMPANIED BY PHIL OLEKSZYK, ACTING DEPUTY ASSOCIATE ADMINISTRATOR FOR SAFETY; KENNETH GRADIA, TRIAL ATTORNEY, SAFETY DIVISION; AND JOHN M. MASON, CHIEF COUNSEL

Mr. RILEY. Thank you, Senator.

Before I begin, I would like to give the two gentlemen who are joining me at the microphone an opportunity to introduce themselves to the committee.

First, on my left.

Mr. OLEKSZYK. Senator, I am Phil Olekszyk, the Acting Deputy Associate Administrator for Safety.

Mr. GRADIA. Mr. Chairman, I am Kenneth Gradia, an attorney with the Office of Chief Counsel of the Federal Railroad Administration.

Mr. RILEY. They are here to keep me out of trouble if you stump me on a question.

Senator, it is a pleasure to be back before the committee this morning, and particularly on this topic. From the first day that I interviewed for the position of Federal Railroad Administrator, I made it clear that improving railroad safety performance and strengthening the service demographics of the industry were going to be the top priorities of my tenure.

This is an excellent opportunity both to review what has transpired in the last 3½ months since I last visited the committee, and to talk about what we can accomplish in the future through the reauthorization of the Safety Act.

Senator, about 3–3½ weeks ago, I had the privilege of announcing the industry safety statistics for 1983. By any standard it was the finest safety performance in the history of the railroad industry. The total number of reported accidents was the lowest in history, and it was a remarkable 14 percent below the second best year we had ever experienced. And that improvement just carries right across the board in all categories.

Fatalities for on-duty rail employees fell by 24 percent. Rail employee injuries were down 15 percent. Even grade crossing fatali-

ties, which are so difficult to control, showed a 5-percent improvement.

Now, these results are really the continuation of a trend that began about the time of the passage of the Deregulation Act in 1979, and since then, train accidents overall have decreased by 60 percent, resulting fatalities are down 25 percent, injuries down 53 percent, grade crossing accidents 43 percent.

Now, numbers like these are a two-edged sword. I get a lot of satisfaction about being able to report improvements of this magnitude in the industry's performance. By the same token, last year's numbers are the floor from which we start to operate this year as we try to again record the best year in the industry's history.

I think we can improve on them. I think reauthorization of the Safety Act is key to that.

Why have the numbers improved? Several reasons.

Senator, I would be remiss if I did not emphasize my own belief that deregulation is a major reason for it. The railroad industry was a cash-starved industry prior to the passage of the Staggers Act. What has happened in the last several years is that the industry has been able to generate for the first time in decades enough cash flow to be able to make the kinds of investments that underlie improvements in railroad safety. Deferred maintenance has been virtually eliminated from the Nation's main lines.

And I was calculating here with my pencil on the way in this morning, we have had a decrease of 239 percent in track-related incidents since the passage of the Staggers Act. Those are just staggering figures. And they really show the impact of cash flow and investment and improvements in physical plant and safety in the industry.

The numbers say other things. I think they speak for the public safety commitment of the industry itself, and they speak for the care and dedication of railroad employees that I have observed everywhere I have been in this country.

I also would like to think that they speak well for the effectiveness of the Federal Railroad Administration's safety program, and we will talk more about that.

FRA approaches safety from two perspectives: that of a regulator and that of an agency charged with enforcing its own regulations. In addition, we carry on a research and development program focused solely on safety issues. What I would like to do is use this opportunity to very briefly review where we have come in each of those areas since I was last before the committee and where I think we can go in the year ahead.

First, on regulatory issues. Since January 1, the Federal Railroad Administration has completed action on seven of the eight major regulatory proceedings that were pending when I last appeared before this committee. The decisions vary in importance, but they include: the issuance of new signal and train control rules based on an agreement between labor and industry. That is the first comprehensive revision of our signal and train control rules in three decades, and much of the technology that dominated three decades ago is only in museums today or out on some of our branch lines in the Midwest.

We have also issued new regulations on hump yard safety designed to improve safety conditions for employees that work in those yards. We have issued a minor regulation complying with EPA noise requirements. We have extended the scope of our track inspection procedures and track safety standards to include commuter track. We have ordered the retrofit of 3,000 hazardous material tank cars to improve their ability to survive collisions. We have issued a 50-page report reviewing the safety performance of Amtrak and America's passenger trains, and outlining a variety of new actions—some regulatory, some based more on human engineering—that we intend to take over the next 6 or 7 months to maintain that record.

Finally, although it is yet to be released, we have completed work on the small railroad deregulatory petition, and we have completed work on the AAR's overheated wheel petition. Both of these are now in the hands of the lawyers who are doing the necessary legal massaging, and we hope to have an announcement on them in the very near future.

Now, Senator, the seven major and three minor regulatory files that have been closed during the months of January and February exceed, I am told by our safety people, the total number of regulatory actions ever closed by FRA in any single preceding year.

In addition, between now and April, we are going to act on the two major remaining matters before the agency. One is alcohol and drug. We are virtually finished our work on an NPRM on alcohol and drug. If Conrail is quiet for the next 2 to 3 weeks, we can finish it by the beginning of April. If Conrail remains a little bit rambunctious, it will be sometime in mid-April. But we are within, I would say, 3 to 4 weeks of having a public announcement on that NPRM.

Second, it is my intention to order a public hearing, probably taking place sometime in June, on the application to alter the power brake rule to accommodate cabooseless trains. I think that is a matter of sufficient importance that it merits a public hearing; and we do intend to order one.

Now, when these actions are taken, with the exception of some very minor items, FRA will have cleared its regulatory calendar. It is then my intention to proceed in the future by focusing our resources on one or two major safety inquiries every year. My intention is to commence and complete those inquiries in about 6 months apiece, rather than to fill our plate with six, seven, eight, nine major actions and take 2 to 3 years to finish them.

I believe that we do have the capacity to do one to two, possibly three, major safety inquiries a year. I think that the price we have paid for overfilling our plate in the past is not only slow action on everything, but very slow action on violations, because the same lawyers that do the regulatory action are the ones that process the violations. I think one of the major reasons that FRA has been so slow in turning over violations is the time consumed on regulatory matters.

What is on the agenda for this year? Senator, at the conclusion of the alcohol and drug proceeding—and, again, I believe we are very close to concluding that—we are going to move in two major areas this year. First, we will initiate a safety inquiry on health

and safety issues of those who ride in railroad locomotive cabs. It will be an open-ended inquiry. We are going to deal with issues ranging from the decibel levels that result from venting air inside the cabs all the way to the crashworthiness of the cabs themselves. And we will start with an open inquiry. We will determine then whether it should proceed to a rulemaking.

Second, we will make a major effort, which may or may not include regulatory action, on grade crossing safety, which is one of the most frustrating but I think important areas we have to deal with. In addition, on a more limited scale, we are going to seek additional regulatory relief for small carriers to maintain their competitiveness, and we are going to proceed with our human engineering programs—locomotive simulator and a variety of training programs that center on hazardous materials.

Senator, on the area of safety enforcement there are some good things to report and some things that, frankly, I am disappointed in; and I will be candid with the committee on both.

On safety inspectors, FRA has traditionally been 30 to 50 safety inspectors below its authorized limit. There are a variety of reasons for that that range from the technicalities of filling positions in the civil service system all the way up to some unique provisions in our agreement with our own union inside FRA.

In November we initiated a series of management changes, and I am pleased to report that they have been successful. We have now hired, filled 321 of the 325 inspector positions we are authorized. That is 30 more than we had a year ago at this time, and by far the highest number that FRA has ever had on board. I believe we will hit the full ceiling on hires by the end of April, early May; and there is a bit of a time lag until some of these people actually come on board, but by the summer we expect to be fully staffed in safety inspectors.

Now, the thing that I have been most disappointed at is the length of time it takes to process a violation within the agency. A violation is like a small lawsuit. It literally has to be processed for the rough equivalent of probable cause. A lawyer has to decide that we can prosecute it and successfully recover on the citation to clear it.

It has been taking about 160 days to process those violations, and in my judgment that is too long. Now, we have been able to cut the time down now from 160 days last July to 114 days. And I think the greatest single factor in that improvement is the fact that we have cleared the deck of so many pending regulatory actions so people have more time flexibility. But I do not think that is anywhere near good enough. We really, frankly, have not had the time to rebuild that management system. I hope that by the time I get to the committee for the next visit, we will have done that.

Third, 2 years ago FRA discontinued its practice of issuing accident reports and safety recommendations following its accident scene investigations. Now, I have ordered FRA to resume that practice. In my judgment, it is a waste of public money to carry on extensive and expensive accident reports and then not produce any kind of a written recommendation. You have no record on which to proceed if the recommendations you make are simply verbal recommendations to the administrator or back to the railroad. And

you do not leave a track record of research data that can lay the basis for future safety improvements.

We will, in the cases where NTSB conducts an investigation that is parallel to ours, yield to their jurisdiction by publishing findings of fact only, not findings of probable cause. But I do believe the fact that we are going back into the accident reporting business is going to play a significant role in laying the basis for future safety actions.

Finally, Senator, on this area, FRA is going to accelerate its program of system assessments this year. We now have 30 more inspectors, and I am hopeful that we can go up to four system assessments a year rather than three. And my view of our safety enforcement program is that it should be a proper mix of the top to bottom system assessment which lets us look at a given railroad's problems and successes in context, onsite inspections and traditional safety inspections, and smaller, more targeted task force inspections. We now have three system inspections in process. We hope to complete those in the near future.

What I hope to do, Senator, on that front, recognizing that followup is the key to the effectiveness of the system assessment is to intensify FRA's followup procedures in the aftermath of these assessments, to work with industry and labor to forge a better spirit of joint venture in improvement in railroad safety through these mechanisms; and to do everything within our power to insure that what we find when we assess a system is the basis for a rapid and immediate as we can make it improvement in the system's overall performance.

Finally, Senator, research and development. FRA undertakes research and development in two areas: first, those areas where the yield is purely safety-related, where there is no economic incentive for the industry to make an investment of its own. Second, we focus our research efforts on data that is necessary to evaluate regulatory proceedings and petitions. For example, on hazardous material tank cars, or you could use any one of a number of examples, when labor or industry come in and petition us to change or make a rule, we cannot accept prima facie the evidence that they give us. We need to crosscheck it. We do a substantial amount of that kind of testing.

We are in the process today of doing a complete program review of FRA's research and development expenditures to insure that they are directed at near-term improvements, improvements that are tailored to meet the needs of the future.

I have been out in Pueblo a couple of days last week. I had to come back too early. I missed a chance to spend a Saturday in Colorado that I was looking forward to, but we will go back to Colorado to finish the work at Pueblo in the near future.

Senator, that is an overview of where we are in our safety program. The reauthorization of the Safety Act is obviously the key to continuing everything that I have outlined. I have to say that in my best objective sense—and I do not think I can be completely objective—I think that both the industry, labor and FRA have done well. I think we can all do better.

I appreciate the role that this committee has played, and its counterpart in the House, in both giving us the authority and sup-

porting us in times of controversy. And we look forward to continuing to work with you.

Senator DANFORTH. John, thank you very much.

You have the virtue of having a clear sense of direction for your agency, and I think that is commendable.

I have a couple of areas for questions. The first relates to the elimination of matching funds for the State enforcement program. Let me ask you first in that regard, do you think that the State enforcement program is worthwhile?

Mr. RILEY. I think that the State enforcement program is worthwhile, and I think the issue here is where the locus of funding should come from, and it is a cost-benefit issue. If one assumes that all of these or a substantial part of these people exist only by virtue of the Federal cost-sharing, then this is an extremely cost effective program. To the extent that one deviates from that principle, it becomes less and less cost effective.

Now, there is an inherent limitation on all of our ability to predict the future, and I have to tell the Senator honestly that in the 3½ months I have been down there, I have had no personal hands-on experience with this program. But in talking to the people who do—and a couple of those are sitting at the table with me today—they are strongly of the opinion—and for a variety of reasons which I will outline—that most of these inspectors do not exist solely by virtue of our subsidy, and therefore, it is a very poor use of limited safety resources from a cost-benefit sense.

The argument goes along several lines. One of them is that of the 32 programs that exist, 13 of them preexisted the creation of the cost-sharing program. So at least to that extent, that is, in effect, a subsidy that does not produce an increased yield.

From their contacts with State and local officials, they have concluded that upwards of 70 percent of the inspectors at minimum would be retained even if we removed our subsidy.

Now, one can debate those figures pro and con. I would make simply this comment: that we have determined the median cost that would be shifted back to a State if we discontinued the subsidies is in the range of $80,000, and if the States do not believe the program is sufficiently worthwhile to invest a sum as small as $80,000, that probably tells us more about the effectiveness of the program than we could offer by offering our own opinions.

Senator DANFORTH. Well, what is your opinion?

Mr. RILEY. Frankly, Senator, in the time that I have been over there, I have tended to agree with the position that is taken by our safety staff, because I am relying on their judgment that from their experience in dealing with the State programs, the great bulk of these inspectors would be retained. We have 30 more inspectors on our staff.

Senator DANFORTH. I understand that, that you think that they would be retained; but that is not the question. The question is is the program itself worthwhile?

Mr. RILEY. Oh, the existence of the State inspection—yes, I think that is, Senator. It supplements our number of inspectors. We are operating and are going to continue to operate the training center that we have in Oklahoma to insure that the State inspectors and the Federal inspectors work off a common base of experience.

Senator DANFORTH. Let us just suppose hypothetically that the result of discontinuing the match would be that there would be no State enforcement program. Would that be a lamentable development or not?

Mr. RILEY. I would have to agree with the chair that it would be. I think that it would verify the allegation that this is a cost-effective program, if that were the case.

Senator DANFORTH. OK. So really the question is not whether or not it is effective, but whether or not it would in fact be discontinued if the match were discontinued.

Mr. RILEY. The extent to which it would be discontinued. Again, it gets back to cost—I think that is fair, Senator. It gets back to cost effectiveness.

Senator DANFORTH. Let me then shift my questioning, in anticipation of the labor panel's testimony. The indication is that they will testify that Congress should attach certain amendments to the reauthorization bill. The amendments deal with the maintenance and inspection of signal systems at rail-highway grade crossings, whether or not hooks should be used as coupling devices to connect railroad cars, whether or not the inspection of brakes should be done only by carmen, whether unions should be authorized to bring suits to require FRA to enforce violations of safety laws, whether or not employees should collect punitive damages in cases of employer harassment, and the prohibition of railroads from providing employees with sleeping quarters within or near rail yards.

Let me just take four of those at the outset. I think two of them are a little different. The maintenance, inspection, and testing of signal systems, the use of hooks, inspection of brakes by carmen, and sleeping quarters. I guess the question I would have is what does Congress do and what does the agency do?

Mr. RILEY. I would be glad to comment on that, Senator, and I would like to add a fifth one, if I could, at the conclusion of your question just to talk about the standing to sue issue, which is one of particular concern.

Senator DANFORTH. Yes. I think that there are two kinds of issues, and I would like to get to those others later.

Mr. RILEY. All right. That is fine.

Senator DANFORTH. The filing of the suits and the punitive damages I think are a little bit different than the question of hooks and who does inspections, and so forth.

Mr. RILEY. That is fine.

Senator DANFORTH. Heretofore there has always been one area which I have not known how to vote on when I get to the floor of the Senate, and that is, what should be the target price of wheat. I do not know, and I always feel naked when I have to make that kind of judgment. I think that somewhat the same situation is posed here on, for example, the use of hooks.

The amount of expertise I have on the coupling of railroad cars is zero. My question is should this be a matter for Congress to get into through legislation? Should we leave it to the FRA without further ado, or are you all just so passive in this area and so negligent that Congress has to get in and take over the regulatory function?

Mr. RILEY. Well, Senator, we have not been passive or negligent. I think there may be an issue as to whether we are right. Let me lead with the one that probably has been most controversial, which is the provision having to do with who performs the air brake tests.

A year ago a regulation was issued by FRA based on consultation and agreement with industry and labor that extended the mileage standard between tests from 500 to 1,000 miles. In addition to that, some language was added to the rule which has since been interpreted as permitting that test to be performed by trainmen, UTU members, in addition to carmen who have traditionally performed that test.

The allegation has been made that my predecessor went back on his deal by putting that language in the rule. I am ill-equipped to comment on that allegation. I was not there. But I can tell the committee that were this amendment directed at the safety issue of the 1,000-mile rather than the 500-mile inspection, I would be very concerned about it; but it is not.

The extension of that inspection period to 1,000 miles is not challenged, and I think that reflects the nature of the basic agreement.

As to who performs that inspection, in my judgment, Senator, that is basically an economic issue. It is not an economic issue on which—it is not an issue that has such strong safety implications that we feel that we are going to come before this committee and attempt to lead it in one direction or another. It is basically a matter of training human beings. Senators, FRA Administrators, UTU members, and carmen are all human beings. I suspect we can all be trained to adequately perform those tests.

We have not determined a shortfall in safety performance in our field inspections. However, my recommendation to the committee is that it listen to the testimony of the carmen who do have a specialized expertise, listen to the testimony of the UTU, of the industry on the economic implications of this. We do not consider that part of the rule an overriding safety issue. We are prepared to abide by any decision this committee should make.

Senator DANFORTH. Why should we not take the position that if you do not decide it, nobody should?

Mr. RILEY. I think that could be a legitimate position, Senator. But what I am saying is we do not see it as an overriding safety issue, so we do not intend to rule on it. We do not intend to come before you and attempt to lead you on safety grounds one way or the other.

Others may disagree with that. It is a problem, because there is language in this rule which has been interpreted as allowing that test to be performed by people other than carmen. I was not here when that language was put in there. I do not know whether it comports with the deal or not.

I can simply say that on the basis of the inspections we have had to date we do not perceive a safety problem there. We are, however, generally aware of the fact that trains are now moving much longer distances between the kinds of inspections the carmen tend to give them. It is not a trend yet that has led us to believe we should take action, but it is a trend we are watching. We are aware of it.

Senator DANFORTH. Do carmen give a different type of inspection than other people would give?

Mr. RILEY. They have a different kind of training overall. On this particular test, we do believe that anyone who is competent, whether it is a UTU member or a trainman, can be adequately trained to administer this test.

I have been told—and Phil, you may want to comment on this—that our inspections have not disclosed any difference in performance under the new rule than the old. Am I correct on that?

Mr. OLEKSZYK. That is correct, Mr. Chairman.

Senator DANFORTH. What about the hooks? I do not know what a hook is. I do not know how to vote on that.

Mr. RILEY. Well, let me try to tell the committee something. The reference here is to the procedure that goes on in hump yards. I do not think this is a well founded amendment, and let me tell you why.

There is legislation that requires automatic couplers on freight cars. The reason that legislation was passed years ago, in addition to forcing progress on an industry sometimes reluctant to recognize it, was to remove a very unsafe situation where human beings would go between the cars and pull the pins to couple and uncouple the cars. On too many occasions, people became a permanent part of the coupler.

Now, what this rule refers to is a procedure that is used in hump yards where a consist of cars is backed up to the top of the hump—and I am going to try to explain this as graphically as I can—the cars uncouple and break loose at the hump, and then roll down a long hill into a variety of sorting classification tracks.

There is a procedure that is used in many of these yards where an individual takes a long rod with a hook on it, reaches that hook in between the cars to make sure that when the cars uncouple the uncoupler spreads fully open. Now, the reason for that is to enable it to couple simply and automatically when it reaches the bottom of the hill.

If it does not, a man has to go in between the two cars at the bottom of the hill and expose himself to the danger of reopening and closing that coupler. And the purpose of using that hook on the top end is to minimize the exposure of an individual to that danger on the bottom end.

Now, litigation ensued on this. There was an allegation made that the fact that the use of the hook required a man to insert an arm and at times a shoulder in between the cars violated the spirit of the automatic coupler rule. FRA contested that litigation and we won, basically arguing that the automatic coupler rule is an equipment requirement.

It is not our view that the insertion of an arm or the insertion of a shoulder as an incident to the use of that hook represents a significant exposure. It is our view in fact that the assurance that that coupler is fully open at the top of the process minimizes the danger to those working down in the bowl.

And I am informed, by again our safety inspectors, that they have not determined a significant incidence of injury that would require us to take action of this sort. I will tell the committee that, although I have seen this hooking operation done many times, the

concern that is expressed in this draft amendment is a new one to me. I had not seen this until recently, and I am going to go back——

Senator DANFORTH. Who do you think is most able to make a decision on this matter, the FRA or Congress?

Mr. RILEY. I believe that we are, Senator.

Senator DANFORTH. How about whether or not to require the FRA to issue rules dealing with maintenance, inspection and testing of signal systems at rail-highway grade crossings?

I think again, John, it is not necessary, unless you want to, for you to go into the pros and cons. Basically the question I have is one of where is the proper forum for deciding these issues. I doubt that it is Congress, unless we have a situation where the FRA is just not doing its job or not even thinking about it.

Mr. RILEY. Senator, if this were a situation where a demonstration could be made that there were a significant safety problem here that we were ignoring, then I think it would be legitimate for Congress to force us to act. But I do not think that is the case here.

Let me expound for just a moment on this. I will say that I gave you color on the hooks before to make sure that everyone understood what that issue was, because I will be frank and say I did not understand it when I first saw it. I went out to a yard and had someone show it to me.

On the grade crossing, we looked at the possibility of doing this back in 1978. We looked back over the grade crossing accidents that had taken place in the preceding 2-year period. Of the 12,000 accidents, we found out there were only about 35 or 37 in which there was any allegation that the inspector, having come to the scene after an accident, found some form of malfunction in the system. In those cases, even then many of the malfunctions were incidental and not related to the accident.

Based on that finding and the recognition that we have only a limited amount of resources to formulate and enforce rules and the industry only has a limited amount of dollars to pay for compliance with them, we decided that a major rulemaking and inspection process to address that kind of problem was not a good use of anyone's safety resources. So we have not ignored it. We have looked at it.

Now, in the course of this year—and incidentally, since 1978 the number of grade crossing accidents has been halved. I think it is logical to assume that the number of these types of incidents has also been halved. To make sure that we are not wrong on this—and I do not need the prodding of the committee. If the numbers show that we are wrong, I will act on my own initiative.

We have gone back through all the grade crossing accidents this year and are working our way back through all of them for the last 2 years. If we find a significant incidence of this kind of action, then we will proceed. But we have not yet found it.

I would make one final comment on this. I have informed both the signalmen and the AAR that this is a resource allocation issue. We would look favorably if they could get together and create an inspection system that in their mutual views did not overtax the safety resources and did address the problem in a targeted way. We would look favorably upon implementing that, and we will make a

reanalysis of both the incidence of this problem and the way these things are reported to make sure there is not any cloaking of the problem when we do our grade crossing initiative this year.

Senator DANFORTH. All right. Now, the other two areas are: First, should unions be authorized to bring suit to require the FRA to enforce any violations of the safety laws; and, two, should employees be allowed to collect punitive damages in cases of employer harassment.

What are your comments on those two proposals?

Mr. RILEY. Senator, taking the latter first, I simply want to tell the committee that I am going to listen with you to the testimony at this hearing and at the House hearing on the allegations of harassment. We rely very heavily not only on what our own inspectors find, but on the information that is sent to us by individuals out in the field.

If there are significant incidents of harassment, notwithstanding the back pay rule that was adopted several years ago, then we are interested in the problem. I am not prepared to tell the committee whether there are or are not. I personally have been involved in two or three of these cases since the beginning of the year. There was a case where I did find an individual that appeared to have been harassed and we were able to arrange a reinstatement. There was another where we ran into a fellow who had committed quite a few violations and was on his way out, and the day before he left he filed a complaint to create cover.

I raise that to the committee just to show the parameters in which you deal. On that one, let me simply say I am going to listen to the testimony and look at it, as the committee is.

I do not have the same kind of feelings on the question of legal standing. The exercise of discretion is an absolutely essential facet to our safety enforcement role. My problem with this amendment, Senator, is that because discretion is exercised in just about every inspection that is made by every safety inspector in the field every day, that the exposure to litigation provided by this amendment is monumental.

Now, the way the law is now written, if there is an emergency situation, if the litigant can prove there is an emergency situation or demonstrate it sufficiently to the court in an injunctive proceeding, and we have not acted, they have standing, they can sue. In nonemergency cases that standing is not granted, and for good reason.

We have very limited resources. They can do three things: they can process violations, they can write regulations, or they can defend lawsuits. In my view, the granting of this kind of standing would skew those resources so largely to legal proceedings on, in many cases, small items, that they would impair our ability to meet our safety agenda.

Second, it would put us in a position where both the exercise of that discretion is impaired by intimidation and where people outside the agency have the practical effect of dictating the use or at least influencing the use of agency resources.

In our view, the law as it is now written is fair and reasonable. It gives the ability to act as a private attorney general in emergency cases. It does not give it in nonemergency cases.

And my fear, Senator, is a safety fear. It is a fear that if we have to get into this kind of a process, whether we win or lose, whether we are right or wrong, the exposure that we will get to draining of resources will significantly impair our safety effort. And I feel strongly enough about this, Senator, that I would talk to OMB and the President about a veto if this were in the bill.

Senator DANFORTH. OK, John. Thank you very much.

Senator Exon, do you have any questions at this time?

Senator EXON. Mr. Chairman, I have no questions now. But I would be very interested in hearing the next panel.

Mr. RILEY. Thank you. We would be very happy to answer any subsequent questions that a Senator might want to submit.

Senator EXON. I apologize for being late. My car would not start.

Senator DANFORTH. Thanks a lot, John.

Mr. RILEY. May I make a closing sentence or two, Senator? In the short time that I have been at FRA, what we get up here and boastfully say is the rapid movement of regulations and other safety improvements could not have been done without tremendous cooperation, both from the industry and from railway labor.

I never anticipated in taking this job that I would find the atmosphere of cooperation that does exist. I am not telling this committee that everything we have done is right. What I am saying is that we intend over the next year to work more closely than we ever have before with both of those parties to make sure that we do do it right.

I thank the committee for the opportunity to appear.

Senator DANFORTH. Thank you very much, John.

[The statement follows:]

STATEMENT OF HON. JOHN H. RILEY, FEDERAL RAILROAD ADMINISTRATOR

Mr. Chairman. It's a pleasure to come back before the Committee this morning, particularly on this topic. From the day I first interviewed for the position of Federal Railroad Administrator, I've made it clear that improving railroad safety and strengthening the service demographics of the industry were my key priorities. This is an excellent opportunity to review what has transpired over the fourteen weeks since I last appeared before this Committee, and discuss what we can accomplish in the future through reauthorization of FRA's safety program.

THE INDUSTRY'S SAFETY RECORD

Three weeks ago I had the privilege of announcing the industry's safety statistics for 1983. By any standard, it was the finest safety performance in the history of the railroad industry. The total number of reported accidents was the lowest ever recorded—a remarkable 14 percent below the second best year we'd ever experienced. That improvement tracks through all categories of the reported statistics:

On duty rail employee fatalities dropped from 78 in 1982 to 59 in 1983, a reduction of 24 percent.

Rail employee injuries declined from 35,146 in 1982 to 29,712 in 1983, a decrease of 15 percent.

Total fatalities from all railroad accidents decreased from 1,119 in 1982 to 1,072 in 1983, an improvement of 4 percent. Over 91 percent of the fatalities occurred in grade crossing accidents or involved trespassers.

Total railroad-related injuries and illnesses declined by 14 percent, from 40,275 in 1982 to 34,761 in 1983.

Even grade crossing fatalities, which are so difficult to control, decreased from 607 in 1982 to 576 in 1983, a 5 percent improvement.

These results continue a trend of consistent safety improvements by the railroad industry that began in 1979. During the five years 1979 through 1983, train accidents decreased 60 percent; railroad fatalities declined 25 percent and railroad injuries dropped 33 percent. During that same period, grade crossing accidents de-

creased 43 percent, and resulting fatalities and injuries declined by 35 and 40 percent, respectively.

These numbers speak for themselves, and they give us an impressive standard to best in the year ahead. They also speak persuasively for the public safety commitment of the industry, for the care and dedication of railroad employees, and, I believe, for the increasing effectiveness of the FRA's safety program.

FRA approaches safet from two perspectives, that of a regulator, and that of an agency charged with enforcing its regulations. In addition, we carry on a research and development program focused solely on safety issues.

REGULATORY ISSUES

Since January 1, FRA has completed action on seven of the eight major regulatory matters that were before FRA when I took this office on November 18, 1983. Those dedications are as follows:

HAZ MAT Tank Car Retrofit: Rule required retrofit of 3,000 hazardous material tank cars to improve their ability to survive accidents.

Signal and Train Control Rule: A major safety regulation, the first modernization of industry signal and train control rules in more than three decades. The purpose was to bring those rules in line with technologies developed over the past 30 years.

Hump Yard Rule. A rule establishing new safety standards to protect employees working in hump classification yards.

Commuter Track: A major rule extending the scope of FRA's track safety standards to include all of the nation's commuter rail operations.

Passenger Safety Report: A fifty page report reviewing the safety performance of American passenger trains, as well as the impact of federal regulations on that performance. The report was accompanied by several minor regulatory changes, and statements of FRA's intention to pursue several initiatives in the area of passenger safety.

The Small Railroad Deregulatory Rulemaking: This is FRA's oldest pending major regulatory action, having been on the books for more than three years. All policy decisions have been made, and an announcement will be forthcoming later this month.

EPA Noise Compliance: A minor, technical regulation amending FRA's compliance rules to reflect changes in the EPA noise standards.

In addition, FRA denied two AAR petitions: a request to extend the compliance date for installation of operative safety hangers on box car doors, and a request to increase the maximum allowable height of couplers on freight cars. In each case, we believe that safety risks are too great to merit granting the regulatory relief petitions.

The six major and two minor regulatory files closed during the months of January and February exceed the total number of regulatory files ever closed by FRA in any single preceding year. We will, in addition, act this spring on the three significant regulatory matters still before FRA. Those matters are as follows:

Alcohol and Drug: FRA believes it can complete action on a strong alcohol and drug regulation by early spring.

Power Brake Rule: I will order a public hearing, to be held some time in June, on an application to alter the power brake rule to accommodate caboose-less trains.

Overheated Wheel Petition: FRA will also complete action on the AAR's overheated wheel petition within the month.

When these and several other minor proceedings are resolved, FRA will have completely cleared its regulatory calendar. It is then my intention to focus our resources on one of two major safety areas each year. It will be our intention to commence and complete these safety inquiries within about six months, rather than fill our plate with numerous inquiries that take years to close. In other words, we can effectively do one or at most two major proceedings at any given time. We will take on major issues and attempt to do them well, rather than spreading our personnel across a mixture of major and minor issues. The three areas on my agenda for the remainder of this year are:

A safety inquiry and possible rulemaking on occupational safety in railroad locomotive cabs.

A major effort by FRA on grade crossing safety, one that may or may not include regulatory action.

Additional regulatory relief for small carriers.

In a few moments I will review the content of these regulatory actions in greater detail. First, though, I want to provide the Committee with the same type of overview on what has transpired in the area of safety enforcement over the past three and one-half months.

SAFETY ENFORCEMENT

1. Safety Inspectors: FRA's greatest accomplishment on the enforcement side lies in the hiring of new safety inspectors. FRA has traditionally been between 30 and 50 safety inspectors short of its authorized limit. There are several reasons for this, including high turnover in the inspector workforce. In November, we instituted a variety of management initiatives designed to surmount those obstacles, and those changes have accomplished their objective. The FRA field force now consists of 321 safety inspectors against an authorized ceiling of 325, along with 46 clerical positions against an authorized ceiling of 54. This is by far the highest number of safety inspectors that FRA has ever had. Despite significant turnover, we have 30 more inspectors on board today than we had a year ago at this time. We intend to fill the four remaining inspector vacancies within the next 60 days, so that by the early summer FRA will be at full strength for the first time in its history.

FRA has also hired four regional training specialists, who are charged with coordinating training of federal and state inspectors and educating railroad industry personnel on FRA safety requirements. I expect these specialists to play a significant role in our efforts to provide effective and timely training for our enforcement resources.

2. Our biggest disappointment has been our inability (so far) to shorten substantially the time period it takes to process safety violations once they reach FRA. Each violation is, in effect, a mini-law suit. It has to be evaluated on its merits, and a lawyer must make recommendations on the legal sustainability of the citation. For these reasons, it has taken 168 days on average in the past to process a violation from receipt to formal action. While we have cut that down by a third, to about 114 days, since November, it still takes too long for violations to be processed, and addressing the problem is our next internal management priority.

3. Two years ago, FRA discontinued its practice of issuing accident reports and safety recommendations following its accident scene investigations. I have ordered FRA to resume issuance of those reports, effective November 18, 1983. It is a waste of public money to carry on extensive accident investigations and then publish no reports. The fact that our recommendations are passed on verbally to railroad management does not ensure that they will form the basis of long-term improvements in industry safety conduct. It doesn't even ensure that the recommendations will have any impact at the railroad to which they are addressed. The reports will resume the format they had throughout the first decade of this agency's existence, prior to their discontinuance two years ago. In the roughly ten percent of railroad cases where NTSB conducts an investigation, we will yield to their jurisdiction by publishing findings of fact only, not findings of probable cause.

4. FRA will accelerate its program of "system assessment"—top to bottom assessment of individual railroad companies on all aspects of their safety operations. We are now completing final follow-up on four earlier assessments, Soo Line, Boston and Maine, Kansas City Southern, and Southern Pacific. We have three new assessments in progress. They cover the Alaska Railroad, Amtrak, and the Chicago and Northwestern. Because we now have thirty additional inspectors, we will be able to accelerate our program to commence four new system assessments this year.

System assessments offer significant advantages, in that they enable us to deal with a railroad safety performance in context, rather than in bits and pieces, and focus our contact at a level of authority within the railroad where meaningful change can be ordered. But their success depends entirely on the tightness of FRA's follow-up. I am making a major effort to rewrite FRA's follow-up procedures, to ensure that our follow-up on safety assessment findings is more thorough and more timely than before. We will also bring labor and management more fully into the process.

RESEARCH AND DEVELOPMENT

FRA undertakes research and development in two areas:

Projects which are purely safety related, where there is no market incentive for private sector investment.

Projects necessary to evaluate regulatory proposals and petitions. For example, FRA could not use industry data in resolving the hazardous material tank car rule. We had to run our own tests to verify or dispute industry findings.

FRA is presently undertaking a full-fledged program review of our entire R&D function. A three-person working group in the Administration has just reported its findings on the relative merits of existing projects and I have spent several days at the Pueblo Test Center evaluating the specific programs we are funding with the project engineers running them. It is my intention to announce some long-term decisions on where our safety research dollars should go, both to help Congress assess the value of our mutual investment, and to provide a long-term planning mechanism for those who work in the research and development field.

An effective safety research program is absolutely essential to FRA's safety regulatory efforts. We intend to take whatever actions are necessary to ensure that the program is indeed effective.

SAFETY REGULATORY REFORM

As I indicated earlier in my testimony, last November I pledged to take action on eight rulemaking proceedings by early spring. Action is now complete on seven of those files, with final action on the remaining file forthcoming in the near future.

Labor/management recommendations

Two of FRA's priority rulemaking projects, signal rule revisions and hump yard protection for workmen, grew out of joint recommendations to FRA by rail labor and rail management. FRA published final signal rules on January 26 and hump yard regulations on February 22.

FRA's signal requirements, which establish minimum safety standards and serve as the basis of industry rules, were first issued in 1937 and last updated in 1950. Signal rules control operations on about 95,000 miles of main track in the continental United States. In the 34 years after the 1950 revisions, significant advancements were made in signal and train control technologies. FRA's final rule, the result of joint recommendations to FRA from rail management, rail labor, and the rail supply industry, amended 80 substantive provisions, eliminated 25 outdated requirements, and revised several procedural rules. We believe the amended regulations are a significant improvement and that all parties to the review effort can take considerable pride in their achievement.

FRA's hump yard rule is a new regulation promulgated in response to a joint request by the Association of American Railroads and the United Transportation Union. The FRA rule requires railroads to establish procedures under which train and yard crews working on tracks in a remotely controlled hump yard will be protected from injury caused by unanticipated movement of equipment on such tracks. The safety protection provided by the rule will greatly benefit employees and railroads at the industry's 125 remotely controlled hump yard facilities, 91 of which are currently operating. The other 34 facilities are expected to be reactivated when traffic volumes pick up. The rule will affect these yards when they resume operation.

Other priority rules

FRA has also recently issued final rules in three other priority rulemaking proceedings. Effective January 15, FRA revised its noise enforcement procedures to encompass the railyard noise source standards published by the Environmental Protection Agency. Later that month, we published two other final rules.

On January 17, we extended coverage of our track regulations to all track used exclusively to provide commuter or short-haul passenger service in a metropolitan or suburban area. As a result of this rulemaking, about 384 miles of track in and around six major cities (Boston, New York, Philadelphia, Washington, Chicago, and San Francisco) became subject to our existing track rules.

On January 27, FRA published a rule requiring that some 3,000 large capacity rail tank cars used to carry flammable gases and certain other hazardous commodities be retrofitted with high-temperature thermal insulation, puncture-resistant head shields, and either large-capacity safety relief valves or additional thermal protection. The purpose of these safety systems is to make the tank cars more resistant to puncture during derailments and rupture when exposed to fire. These requirements, patterned on those mandated by earlier rulemakings for some 20,000 uninsulated tank cars used to carry the same commodities, must be met by the end of 1986. This rule does not signal the end of our regulatory activity on tank car safety. We are continuing to analyze the need for additional regulations covering hazardous materials tank cars and commodities not encompassed by existing regulations.

Alcohol and drug rulemaking

The last, but by no means least, priority rulemaking is FRA's proceeding on alcohol and drug use by employees involved in railroad operations. To date, we have

issued an advance notice of proposed rulemaking and held five days of public hearings. Our proceeding has elicited broad participation by labor, the railroads, and members of the public. All of the information received in that process has now been analyzed, and we have sorted through the many issues associated with our regulatory options.

As a subject matter for regulation, this problem is enormously complex. We will press forward in our rulemaking, however, and expect to issue a notice of proposed rulemaking in the near future. Let me add that FRA is committed to completing its work on the notice before April 1, but review and coordination within the Administration will necessarily take some additional time.

The notice will make constructive proposals that can reinforce, rather than undermine, the positive steps already being taken in the private sector. Recognizing that regulations alone cannot do the job, FRA has renewed its commitment to voluntary action. In concert with labor and management, we held a National Planning Conference in Washington last November 14 and 15. The participants established a national planning committee consisting of senior labor and management leaders, together with working groups of key people knowledgeable in areas such as drug abuse, education and training, and labor relations. The working groups have all met on several occasions since the conference, and their work is ongoing. I believe this effort will lead to strengthened employee assistance programs, better referral systems for problem employees, and improved education and awareness programs. FRA will contribute through staff support, research, and financial assistance for pilot projects that clearly have the support of labor and management.

SAFETY COMPLIANCE PROGRAM

FRA's safety compliance activities represent the final element of our safety program. I am committed to using our safety resources, and the full range of legal remedies available to us, in the manner best calculated to identify and correct safety problems. Safety assessments, partial and systemwide, will continue to play a vital role in our efforts because they have proven to be an effective way of directing top management's attention to existing safety problems. We will also continue our regular individual compliance inspections, which provide a valuable check on compliance with federal safety requirements.

Safety assessments

Late in 1981, ERA announced its intention to rely on safety assessments as a critical element of its compliance program, a decision that I fully support. Safety assessments may be systemwide, where FRA evaluates overall safety, or may be more narrowly focused on an organizational element of the railroad (such as a division) or a particular discipline (such as signals). In a systemwide assessment, an FRA task force comprehensively evaluates all aspects of safety on a railroad and works with management to develop solutions to the problems uncovered. The assessment focuses on the railroad's track, signal systems, equipment, operating practices, hazardous material procedures, accident reporting, personnel training and deployment, and safety records. After completing the evaluation, FRA prepares a compehensive report of its findings and recommendations for remedial actions and provides a copy to the railroad. Senior FRA officials then meet with the railroad's management to discuss the report and to devise solutions to the problems found during the assessment. Assessments require a substantial commitment of FRA's resources. For example, our recent assessment of the Kansas City Southern involved 43 FRA employees, 691 man-days, and $30,000 in expenses.

FRA completed systemwide assessments of four railroads in 1983: the Boston and Maine, the Kansas City Southern, the Western Pacific, and the Houston Port Terminal. Final reports are now being prepared on system assessments of three other railroads: Amtrak, the Chicago and Northerwestern and the Alaska Railroad. Last month we began a system assessment of the Delaware and Hudson and plan to commence three other assessments during this year. We are still evaluating the effectiveness of the 1983 assessments. Based on our prior experience, we expect each of the railroad involved to achieve substantial ongoing improvement in their safety records.

As I previously noted, system assessments offer significant advantages. They permit FRA to evaluate a railroad's safety performance in context and to focus our contacts on railroad officials at a level of authority sufficient to order meaningful changes. The success of an assessment depends largerly, however, on the effectiveness of FRA's follow-up procedures. We are now revising our assessment procedures to ensure that follow-ups are more thorough and more timely than before.

Surveillance and inspection activities

One of my responsibilities in the stewardship of FRA's safety program is to ensure that our field inspectors are deployed and used effectively to accomplish the agency's safety mission. Our planning tool for this purpose is FRA's National Inspection Plan, which is issued on an annual basis. The 1984 Plan sets forth each FRA region's plans regarding inspections, manpower utilization, priorities, and goals.

As I stated earlier, individual inspections play a critical role in our compliance strategy. In 1983, FRA safety inspectors conducted 66,400 inspections, an increase of about 31 percent over the number performed in 1982. Based on those inspections, 2,271 violation citations were issued, which exceeded citations in 1982 by 16 percent. During fiscal year 1983, FRA collected over $2.4 million in civil penalities for safety violations, the highest total since 1980.

FRA/railroad conferences

FRA collects and analyzes safety statistics on all railroads. We use that information to assess safety trends in the industry and to study the safety performance of individual railroads, both in isolation and in relation to other railroads of similar size. On occasion, our analysis reveals systemwide or site specific problems on a particular railroad that do not merit a field assessment. When that occurs, senior FRA officials meet with that railroad's executives to present FRA's findings and to discuss potential remedial actions. We have been encouraged by the success of these safety analysis conferences, six of which have been held in the last three years. Each railroad involved has taken corrective measures in response to the concerns raised by FRA.

STATE PARTICIPATION FUNDING

The State Participation Program was established in 1970 to provide states with an incentive to participate in FRA's safety enforcement program. State inspectors are authorized to work in all inspection disciplines except hazardous materials. We will continue to broaden the responsibilities assigned to state inspectors and to provide training for them. We do not recommend, however, continued federal funding of grants-in-aid for this program. Given the maturity achieved by the state programs over the past 14 years and the limited resources available to FRA, we believe that the states should now assume full responsibility for the salaries and related costs of their inspectors. At the present time, 32 states have requested funding to employ 102 inspectors. Based on a recent survey of these states, we believe that at least 28 states, employing a minimum of 70 inspectors, would remain in the program if federal matching funds were discontinued.

OTHER FRA ACCOMPLISHMENTS

Systems safety plan goals

In December 1981, FRA transmitted its Systems Safety Plan to Congress. The Plan established as a five-year goal a 20 percent improvement over 1976–1980 results in five priority areas of safety. I am pleased to report that for the years 1981–1983, the average improvement in four of the five designated areas is 29 percent. Those areas are hazardous materials releases, rail passenger fatalities, employee fatalities, and grade crossing fatalities. Unfortunately, we have not made similar improvements in the fifth area, trespasser fatalities. I have directed the Office of Safety to develop additional initiatives to address the tresspasser problem, which is a particularly difficult issue to resolve through governmental action.

Hollow axle failures

In 1982, two M–2 commuter cars operated between New Haven and New York City lost wheels mounted on hollow axles. FRA immediately launched an investigation of the problem and in November of 1982 reached agreement with the owners and operators of the equipment on interim remedial measures, which involved increased inspections and operational speed limits. In addition, an axle retrofit program for all 240 cars in the M–2 fleet was developed. New inspection procedures were insitituted in February of 1983, supplemented by ultrasonic testing of all hollow axles for defects. The axle retrofit program was completed in October of 1983, and operations have now been returned to normal—all, I am happy to report, without any further incidents of wheel failures.

SAFETY INITIATIVES

FRA has devoted considerable effort to the study and development of new rail safety initiatives. I want to call your attention to several that I consider particularly significant.

Grade crossings

About 54 percent of all railroad fatalities are the result of rail-highway crossing accidents. I am pleased to report that, over the last five years, the number of grade crossing accidents has declined by almost 50 percent and resulting fatalities by more than 33 percent. Those results are encouraging, but I am convinced that more can be done. We are undertaking several new initiatives that should further enhance grade crossing safety.

FRA is giving renewed support to Operation Lifesaver, a program of public education and law enforcement on grade crossings supported jointly by the Federal Highway Administration, local governments, and FRA. About 70 percent of grade crossing accidents and over half the associated fatalities occur at either public crossings without automated warning devices or at private crossings. Operation Lifesaver concentrates on raising the driver's awareness of the dangers of rail-highway crossings and of warning signs and signals. The program also emphasizes to law enforcement officers the safety contributions they make when enforcing safe driving laws at crossings. In addition, Operation Lifesaver stresses potential engineering improvements at crossings that enhance safety.

Another FRA initiative addresses safety concerns at the many low volume (both highway and rail) grade crossings in our country, most of which will never merit the major expense of automated train activated warning devices. FRA is working with the Federal Highway Administration to develop a series of workshops on grade crossing planning for federal, state, and railroad officials. We are developing a publication on railroad-community-state cooperation and cost estimation for crossing protections, which will be distributed to railroads, states, communities, and citizen groups.

Passenger equipment

In January of this year, FRA submitted to the Congress its report on railroad passenger safety. Based on that comprehensive study, FRA concluded that rail passenger service in the United States has compiled a superior safety record that can be attributed to the rail industry's operational and safety practices as well as the effect of FRA's extensive safety regulations. To enhance that record, FRA has issued regulations on commuter track and passenger car brakes and will take three other intitiatives. First, FRA will convene a Special Safety Inquiry in May to assess the potential safety impact of the technical and operational changes occurring in the industry. Second, FRA will soon issue guidelines on the flammability and smoke emission characteristics of materials used in the construction of rail passenger equipment. Third, FRA will sponsor an industry-wide review of emergency procedures by passenger rail service providers to ensure that adequate measures for emergency preparedness are in use. We are confident that these intitiatives will make positive contributions to railroad passenger safety.

Safety training

About 28 percent of all railroad accidents and a far larger portion of the most serious rail accidents are caused by human error or failure to follow safe operation practices. We beleive that many of these accidents, and the resulting casualties, could be avoided through improved carrier training programs. FRA is expanding its training activities substantially to assist railroads in training employees, particularly in the handling of hazardous materials. Our newly hired training specialists will have primary responsibility for coordinating FRA's training efforts, with the active support of our entire field force of safety inspectors. FRA's training program will include seminars on federal safety requirements for rail management and labor and on-ground supervision to ensure uniform understanding of those requirements.

We will continue to explore innnovative training approaches, such as the use of computer interactive videodiscs, which proved highly effective in a pilot exercise last year in conjunction with the Port Terminal Railroad Association. In that program, about fifty management and operating employees were trained on the handling of hazardous materials and their responsibilities when confronted with mishaps such as leaks and derailments.

Task force on rail futures

Last November, an Amtrak train derailed in Texas, killing four passengers and injuring a number of others. Investigation of the accident site revealed that a rail fabricated from high alloy steel had failed. Because the nature of the failure did not appear consistent with past rail failures, FRA established a task force to investigate the problem. That group is making a full technical evaluation of the rail failure. We expect their report to be completed by May.

Mr. Chairman, this completes my prepared statement. My associates and I would be happy to respond to any questions the Subcomittee may have.

[The following information was subsequently received for the record:]

QUESTIONS OF THE MAJORITY AND THE ANSWERS THERETO

Question. What sort of proposals are you considering for the purpose of dealing with alcohol and drug use by railroad employees? Do you expect problems or lengthy delays in the OMB review process?

Answer. Our advance notice of proposed rulemaking set out a wide range of alternatives for dealing with the alcohol and drug problem, including federal rule G (prohibiting employees from possessing or being under the influence of alcohol or drugs), mandatory testing programs, supervisory observations, coworker certification, improved accident reporting, and promotion of voluntary programs. The hearing process helped us improve on that listing. We have endeavored to use the public comments and other available information to consider this problem from the ground up. We have reviewed, among other factors:

the impacts of alcohol and drugs on safety (both in terms of what we know and what we do not know);

what standard of conduct employees can and should be held to;

the means available to anticipate or detect alcohol and drug use before an accident happens and the monetary and other costs that they entail;

the role of peer groups in preventing or reinforcing alcohol and drug use; and

the relationship of regulatory activities and voluntary programs.

It appears at this stage of analysis that, while this problem will never be solved wholly through regulation, neither will it receive the attention it deserves in the absence of appropriate regulations. Therefore, we will send forward a notice of proposed rulemaking (NPRM) in the near future. It would be premature to announce the specific proposals that we will make, since they will be subject to review within the Department and within the Executive Branch.

I do not expect unreasonable delays at OMB. Our proposals will be constructive, and we expect that they will be received as such. As I noted in my prepared statement, however, this subject matter is inherently complex. Meaningful consultations could take several weeks, but that is not, in our view, an unreasonable period in light of the subject matter.

RAIL-HIGHWAY CROSSING INITIATIVES

Question. Do you have any recommendations on ways to reduce the number of accidents at rail-highway crossings?

Answer. About 54 percent of all railroad fatatilies are the result of rail-highway crossing accidents. In 1983, 574 individuals died at rail-highway crossings.

However, in the last five years, the number of accidents has been nearly halved and the number of fatalities reduced by more than a third. The 1983 figures are the lowest since records have been maintained (i.e., since 1920). We are pleased with this trend, but we also recognize that more must be done.

A program of public education and law enforcement regarding crossings, called Operation Lifesaver, is being renewed support by Departmental Agencies.

There are approximately 150,000 public crossings that will probably never have an automated warning device. In addition, there are nearly 140,000 private crossings for which the only safety remedy available is public education. Operation Lifesaver is the only program which addresses private crossings. Seventy percent of the accidents and over half the fatalities occur at either public crossings without automated warning devices or at private crossings. Operation Lifesaver concentrates on raising the driver's awareness of the dangers of rail-highway crossings and of warning signs and signals and their meanings. Operation Lifesaver also seeks to educate law enforcement officers regarding their potential role in enforcing safe driving practices and laws at crossings. The engineering thrust of Operation Lifesaver tries

to acquaint all concerned with potential physcial improvements (often low cost) which may have been overlooked at the crossing.

FRA and FHWA field personnel assist by participating in local speakers' bureaus and by setting up and staffing displays and arranging meetings between industry and local officials. I have ordered every FRA safety field inspector to participate in at least one Operation Lifesaver Program every ninety days, resulting in over 1,200 Operation Lifesaver presentations in 1984.

This summer, FRA will co-sponsor a national conference of state and local administrators to evaluate and improve the Operation Lifesaver Program. The FRA Administrator will keynote the conference. Special emphasis will be placed on tightening local enforcement of grade crossing traffic regulations, and on educating the public as to the difference in stopping capability between an automobile and a train. Finally, the FRA Administrator will make a personal effort to enlist participation by the six remaining "non program" states prior to the national conference.

Finally, I would bring to the committee's attention that FRA is the custodian of the U.S. DOT/AAR National Rail-Highway Crossing Inventory. This computerized data base is maintained voluntarily by most states and railroads. The inventory contains information about highway and rail traffic of each of the 400,000 crossings, the type of protection at the crossing and additional data concerning the physical railroad and highway characteristics. This information assists states in their efforts to determine what improvements should be made at the crossings and also FRA as a means to have up-to-date information about particular crossings. More than 80,000 file changes were submitted to and processed by the FRA in 1983. However, we are continuing to review with states and the railroads methods for simplifying the updating process.

Another FRA initiative will address the large number of low volume (often low in both rail and highway traffic) crossings that exist in this country, most of which will never merit the major expense of automated train activated warning devices. State and railroad program managers often overlook low cost alternatives, and thus overlook low volume crossings. This initiative would seek to increase the manager's and the citizen's awareness that other crossing alternatives do exist. FHWA and FRA are working together to develop a series of workshops for Federal, state, and railroad officials. The FHWA's recently produced slide-tape presentation well illustrates the efficacy of "low cost" approaches, but does not include all alternatives. The FRA will use its field resources to gather before and after photographs and data showing other low cost alternatives. A brochure depicting before and after situations, suggesting approaches to railroad-community-state cooperation, and estimating costs will be produced and made available for wide distribution to railroads, states, communities and citizen groups.

NTSB–FRA COMMUNICATIONS

Question. In 1982, the Commerce Committee asked FRA to comment on what steps could be taken to improve communications between your agency and the National Transportation Safety Board (NTSB). Please provide an update on what steps have in fact been taken. Also, the Committee understands that FRA and NTSB have been working on a "memorandum of understanding" intended to clarify the working arrangement between your agencies with respect to railroad accidents. What is the status of the memorandum?

Answer. In an effort to close out many old NTSB recommendations, FRA and NTSB agreed in 1983 to initiate regular meetings to discuss open recommendations, update the FRA responses and accelerate the NTSB close out procedure. This worked well and resulted in closing 18 track, 14 hazardous material and 6 equipment recommendations.

FRA provided formal updates to 17 operating practice recommendations in October of 1982, but has yet to receive a response from NTSB with draft updated response to 15 equipment and 20 signal recommendations early in 1983.

At a January 1984 meeting, the NTSB staff indicated that most of the operating practice recommendations would be closed in the near future. FRA action on the equipment and signal recommendations will be formally transmitted to NTSB shortly. NTSB staff indicated the FRA action will permit closing most all of the open equipment and signal recommendations.

Currently, there are a total of 90 open NTSB recommendations. The only other major group that needs to be updated is the passenger items. FRA withheld updating these pending issuance of the Congressionally mandated report on "Railroad Passenger Equipment." This report was transmitted to the Congress on January

14, 1984, and we are in the process of updating our reply to the 16 open passenger recommendations based on this report.

My Associate Administrator for Safety and I will meet with Chairman Burnett in the near future to ensure the closeout procedure continues.

NTSB has the statutory authority to investigate any railroad accident that cause a fatality, substantial property damage, or that involves a passenger train. In accordance with a memorandum of understanding, FRA assisted the NTSB in the 11 major railroad accidents it investigated during 1983. I believe this cooperative relationship is working well.

BRIDGE TUNNELS

Question. The National Transportation Safety Board (NTSB) has advised the Committee that several railroad accidents and incidents suggest the possiblity that railroad bridges and tunnels are not being adequately maintained and inspected. What are your views on this matter? Do you think FRA needs to establish minimal safety standards concering such structures, as suggested by NTSB?

Answer. As noted in the NTSB recommendations, the maintenance problem is more due to inadequate resource than a lack of Federal standards.

On the Northeast Corridor (NTSB's primary area of concern), much of the problem is due to "orphan bridges" which do not have clear ownership and maintenance responsibilities.

FRA has taken the lead in working with Amtrak, the FHWA and state and local governments in addressing this issue.

Furthermore, in light of NTSB's comments, FRA will place added emphasis on bridge and tunnel inspections in its upcoming system assessments.

Question 4—Majority

QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

FRA VISA-A-VIS FHWA RE RAIL-HIGHWAY CROSSING PROGRAMS

Question. You have indicated your intent to have FRA initiate a proceeding on grade-crossing safety. Both FRA and the Federal Highway Administration (FHWA) are responsible for this area.

1. What is FRA's regulatory authority in this area?
2. To what extent do FRA and FHWA coordinate their efforts to promote grade-crossing safety?
3. Are there initiatives which FHWA should be taking that FRA does not have the authority to undertake?

Answers. FHWA is responsible for administering the Federal-aid Highway Program which includes Section "203" funds for crossing safety. FHWA has no regulatory authority in rail-highway crossing safety through FRA has assisted FHWA in promoting this program to states and railroads, and in assessing the program's impact.

In addition, FRA is custodian of the U.S. DOT/AAR National Rail-Highway Crossing Inventory. This computerized data base is maintained voluntarily by most states and railroads. More than 80,000 file changes were submitted to and processed by the FRA in 1983. This information is used by the states to aid in their determinations of what improvements should be made at the crossing and by FRA and others as input for various grade crossing analyses.

Also, grade crossing research projects are often jointly funded by FRA and FHWA and both agencies are providing funding for the Third National Operation Lifesaver Symposium to be held in July, 1984.

FRA and FHWA developed a computer based model (Resource Allocation Model) which uses the Grade Crossing Inventory, accident history, accident predictions, warning device costs and effectiveness data, and budget limitations, in developing a list of suggested rail-highway crossing projects based on cost to benefit ratios. Use of this model provides the program manager a systematic means of reducing the number of potential projects to a level which can be given individual attention before final decisions are made. Information not available to the model is considered in this latter process. This information includes: number of passenger trains, highway buses, hazardous materials trucks, projected traffic pattern changes, and an on-site engineering review. Use of the model is optional.

Reflectors and alerting lights have been studied by DOT as possible methods of reducing the number of grade crossing accidents, but we failed to find favorable cost-to-benefit ratios to support Federal involvement.

There are no Federal regulations setting forth maintenance standards for automated rail-highway crossing warning devices. In 1976–1978 the FRA formally considered the need for rulemaking. The action was terminated because of a lack of potential benefit, but FRA is analyzing the date from 1979–1983 to determine if our earlier conclusion is still justified.

SYSTEMWIDE ASSESSMENTS

Question. In your testimony, you indicated that the key to the success of FRA's systems safety assessment approach is follow-up. What specific improvements do you plan to implement in FRA's follow-up procedures?

Answer. Prior to my taking office, FRA had formalized assessment follow-up procedures. Experience has shown that follow-up activities should be initiated no later than 180 days after the completed assessment. This will permit the carrier time to develop and implement programs to address FRA recommendations. Follow-up will be a formal activity with written reports addressing each FRA recommendation. In no less than 60 days after follow-up activities are completed, a close-out conference is held with all concerned.

I am presently in the process of re-evaluating every aspect of our past assessment follow-up procedures, and intend to consult at length with both labor and industry leaders in making that reassessment. Follow-up is the key to the effectiveness of the system assessment process, and I want follow-up to be as tight and effective as is reasonable possible.

Because we are just beginning the re-evaluation, I am not yet in a position to recommend specific improvements. But I will be happy to share my conclusions with the committee as soon as they are developed.

Question. Rail labor has expressed concern over FRA's systems safety assessment approach to enforcement. They argue that this approach creates no incentive for carriers to correct defects, as FRA does not immediately assess a penalty upon finding a violation. What is your response to rail labor's concerns about systems safety assessment?

Answer. We believe rail labor's concerns are unfounded. They are premised on the assumption, contradicted by our experience, that railroads will not correct defects pointed out by FRA inspectors during safety assessmemts unless a civil penalty is immediately imposed. With a few isolated exceptions, railroads have taken expeditious remedial action on defects discovered by FRA during our system safety assessments. Where FRA inspectors believe that immediate penalty assessments would improve the railroads' response, penalties are imposed. However, experience shows that an immediate penalty citation is often a disincentive to correction in that one of the primary inducements to timely remedial action, avoidance of a fine, is removed.

Rail labor's complaints betray a misunderstanding of the fundamental purpose of the system assessment, which is to evaluate a railroad's safety performance in context, identify problem areas, and induce high level railroad officials to order meaningful changes in management or procedures, and not simply to ferret out individual defects for subsequent prosecution. To accomplish those objectives, a substantial number of FRA inspectors may spend weeks inspecting carrier property, operations, and records with the assistance of railroad officials. An assessment cannot be done effectively without the close and candid cooperation of railroad employees at all levels. The railroads assessed by FRA in the past have cooperated fully with FRA, a factor that is responsible in large measure for the outstanding success of our efforts. We seriously doubt that any railroad would cooperate with FRA if the focus of the assessment shifted from identification and correction of safety problems to assessment of civil penalties.

It is also essential to bear in mind that system assessments are only part of FRA's safety enforcement program. In addition, FRA safety inspectors use conventional inspections to monitor the industry's compliance with federal safety requirements. In 1983, our inspectors conducted 66,400 inspections and issued 2,420 violation reports, which exceeded the 1982 levels by 31 and 11 percent, respectively. FRA's compliance program is active and effective. The rapid and sustained improvement in railroad safety statistics is testimony to that. Transformation of the system assessment into a prosecution strike force would, in our judgment destroy its effectiveness as a safety tool.

Question. In their testimony before the Committee, rail labor raised a concern about some 300,000 reported violations in 1982 for which FRA assessed only 15,000 penalties. Committee members are interested in knowing what the nature of these

violations was, why that number of penalties was assessed, and whether all the defects in question were corrected.

Answer. In calendar year 1982, FRA inspectors found about 323,000 instances of noncompliance with federal rail safety requirements. Many were highly technical or extremely minor violations. Based on those findings, our inspectors transmitted a total of 2,073 violation reports, many of which contained multiple individual safety violations, to FRA's Office of Chief Counsel with a recommendation that civil penalties be assessed. The remainder were either returned for more information or prosecution was declined for failure to state a violation.

The 323,000 defects found in 1982 occurred in all areas regulated by FRA, including track, equipment, operating practices, signals, and hazardous materials.

Since the agency's inception, FRA's field inspectors have been primarily responsible for deciding whether to recommend assessment of a penalty for any particular defect they find, or to use the ability to avoid a penalty as an incentive to induce immediate repair. Inspectors rely on their expertise, experience, and policy guidance from FRA management in determining whether, in a given case, a fine would promote safety. As noted above, our inspectors recommended that penalties be sought on 2,073 violation reports in 1982, a ratio between reports and defects comparable to previous years. In the course of field inspections, FRA inspectors often find defects that do not, in their judgment, warrant imposition of a fine. That decision may be based on any number of factors, the most common being the expeditious correction of the defect by the railroad.

Given the limited resources at our disposal and the vastness of the nation's rail system, FRA's safety compliance program emphasizes monitoring of industry practices. By inspecting on a sampling basis and threatening or recommending the assessment of civil penalties as appropriate, FRA believes that its compliance program has strongly promoted safety, as evidenced by the rail industry's consistent improvement in all areas of the reported accident statistics since 1978. Moreover, no one has suggested that our safety inspectors are ignoring serious safety defects.

The exact number of violations cited by FRA's inspectors in any particular year may vary substantially due to any number of factors, including the number of assessments conducted, the industry's compliance efforts, and the time required by inspectors to perform other assigned tasks such as accident and complaint investigations. FRA has never established a quota on violations, either relative or absolute. The best judgment of FRA's field inspectors on what remedial procedure best protects the public determines the number of violations submitted for prosecution in any year.

Question. Rail labor's testimony takes issue with the validity of the safety data compiled by FRA, focusing in particular on the reduction in employment in the last few years and the monetary threshold for reporting accidents, among other issues. To what extent are these and other factors taken into account in compiling and analyzing the data? Does the safety data over the last several years represent an improved safety record for the rail industry.

Answer. The safety record of the railroad industry has improved steadily every year since 1978 even when the results are normalized to take into account reduced traffic and employment levels. For example, the total number of railroad accidents reported to FRA in 1983 dropped 13 percent from 1982 results after being normalized for mileage, thus taking into account reductions in equipment utilization and employment. The accident rate per million train miles has decreased by 55 percent since 1978. The employee on duty casualty rate, normalized by employee hours worked, has decreased by 33 percent since 1978. FRA's accident reporting threshold is adjusted every other year to account for inflation. The formula used is based on actual railroad labor and material costs.

Contrary to rail labor's accusations, FRA closely monitors the accuracy of the accident data reported to it by the industry. FRA has not hesitated to access stiff fines against railroads where necessary to ensure accurate and timely reporting. Over the last six years alone, FRA has collected a total of $119,600 from 28 different railroads for violations of FRA's accident/incident reporting rules (49 CFR Part 225).

Question. Concern has been raised that smaller tank cars carrying hazardous materials are not covered by the recent FRA rulemaking requiring certain equipment on jumbo tank cars carrying hazardous materials. What is FRA's view of this concern? Are there plans to institute a proceeding to cover these smaller cars?

Answer. The recent tank car rulemaking (Docket HM-175) did not include smaller capacity DOT specifications 105 and 111 tank cars because extensive analysis demonstrated that it would not be cost effective to do so.

Large capacity tank cars (over 18,500 gallons) are used more frequently than tank cars with less capacity. This greater utilization rate and their larger size increase

the odds that these cars will cause a major societal loss. The cost-benefit analysis prepared for the final rule in Docket HM-175 shows that society is best served by having large capacity tank cars retrofitted with additional safety features. Using the same cost-benefit methodology, we found that the benefits from retrofitting the smaller tank cars do not outweigh the costs. This outcome is primarily caused by a much lower capacity and utilization rate of the smaller tank cars in comparison to the larger tank cars.

Moreover, the threat to safety posed by these smaller cars will decline dramatically in the future. Between 1960 and 1980, only 165 tank cars with a capacity less than 18,500 gallons were built to transport the hazardous materials requiring the additional safety features. All of the other 4,546 smaller tank cars transporting these materials were built more than 20 years ago. As these cars are retired, they will be replaced by the larger, fully protected cars.

Accordingly, we are not planning to institute a proceeding to cover these smaller cars. Our analysis shows that the resources available for safety programs would be more productively devoted elsewhere.

SAFETY TRAINING

Question. You have indicated FRA's efforts to train rail employees in safety and particularly in the handling of hazardous materials. What specific programs has FRA initiated, and how is the industry involved in these programs? What specific problems has FRA isolated to be addressed in these programs?

Answer. FRA has supported efforts to modernize industry safety training by promoting a pilot program utilizing state of the art computer interactive videodisc techniques.

The under fiscal year 1983 project cooperatively funded by the Port Terminal Railroad Association of Houston, Texas (PTRA) and FRA, a course on hazardous materials handling was offered to fifty railroad workers on the FTRA in Houston, Texas. This hazardous materials course is designed to teach engine service and ground crews their responsibilities when they are confronted with hazardous materials mishaps, such as cars leaking, derailments, and hazardous materials accidents. Courses were also given in several other areas of train yard safety. This program has been successful and has been enthusiastically reeived by the industry. An effort is now underway to expand the program to the entire railroad industry.

In addition, each railroad is required to submit its carrier training program for instruction and testing to the FRA where it is evaluated to determine its adequacy. If a problem is identified, FRA works with the carrier to upgrade the railroad's training program.

The FRA also conducts an extensive classroom course at the Transportation Safety Institute. These courses address all of the Federal railroad safety regulations in Oklahoma City. The courses are attended by all Federal and state inspectors. Seminar extensions are provided for the railroad carrier personnel to encourage uniform understanding of Federal requirements.

In addition, the FRA has supported the development of the Research and Locomotive Evaluator/Simulator (RALES). The device, which has undergone final acceptance testing, will soon become operational as: a human factors research tool to determine the environmental and operational effects of the locomotive on operating personnel; an aid in ascertaining operational efficiencies in train handling techniques; and a device to be used in evaluating current training techniques for locomotive engineers.

Senator DANFORTH. Next we have the labor panel: James R. Snyder, Railway Labor Executives Association; R. T. Bates, Brotherhood of Railroad Signalmen; and C. E. Wheeler, Brotherhood of Railway Carmen of the United States and Canada.

Mr. Snyder, would you like to take the lead.

STATEMENT OF J. R. SNYDER, NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION, AND CHAIRMAN, SAFETY COMMITTEE, RAILWAY LABOR EXECUTIVES' ASSOCIATION; ACCOMPANIED BY R. T. BATES, PRESIDENT, BROTHERHOOD OF RAILROAD SIGNALMEN; C. E. WHEELER, GENERAL PRESIDENT, BROTHERHOOD OF RAILWAY CARMEN OF THE UNITED STATES AND CANADA; AND LAWRENCE M. MANN, COUNSEL

Mr. SNYDER. Good morning, Mr. Chairman, Senators, and members of the staff of the subcommittee. It is indeed a pleasure to come here this morning.

I am privileged to have on my left here Mr. Larry Mann, who is the RLEA counsel for all the railroad brotherhoods and, I might add, who has been our representative and counsel since the 1970 act was enacted in Congress, dealing with this very important subject of safety. On my right is Mr. Wheeler from the great State of Missouri, who is the new president of the Brotherhood of Railroad Carmen; and also on my right is Mr. Tom Bates, president of the Brotherhood of Railroad Signalmen.

In compliance with the committee's request, we have a full statement, and I also have a supplemental statement and with your permission, and also some amendments that have been discussed.

Senator DANFORTH. Good.

Mr. SNYDER. Before I start, let me say that I was just listening to the discussion you had with Mr. Riley and his staff. I was very glad to hear his statement. I would just like to say, he is the new man on the block. We have had some good relationships. It is to be tested. The jury is still out on him, and so far we have been getting along very good down there.

You will see in my statement where we have made some statements of some agreements that we have made and worked out. It does not apply to him and his staff. It applies to the other representatives of the FRA.

As in the past, we wanted to provide you with our analysis of the safety statistics since the prior authorization legislation. However, the FRA has not provided us with the data necessary to make an accurate evaluation. In our complete testimony we have set forth what should be kept in mind in the evaluation of the figures provided to you by the FRA and the AAR.

Concerning the authorization for fiscal years 1985 and 1986, we urge your committee not to reduce the authorization that was enacted for fiscal year 1984, $31.4 million, plus $2.9 million for the State safety programs. This same authorization should allow for the hiring of 30 additional inspectors, 10 each for motive power and equipment, signals, and track.

The administration is seeking once again to gut the State program. Fortunately, your committee has recognized the importance of retaining the States role in rail safety.

Now I would like to direct your attention to much needed changes in some of the safety laws. These proposed amendments will go a long way in reducing the hazards that exist on our Nation's railroads. These will be discussed not in any particular order of importance.

MAINTENANCE STANDARDS FOR GRADE CROSSINGS

Grade crossing accidents continue to be the highest cause of casualties on the railroads. Only about one-third of the public grade crossings have active devices such as bells, lights, or gates. The Department of Transportation in earlier studies pointed out that if 15,000 crossings were provided with improved protection, accident costs would be reduced nearly three times that of the installation and maintenance costs of the improvement.

The ironic aspect of this critical safety area is that there are no Federal regulations requiring adequate maintenance and testing of grade crossings. The National Transportation Safety Board has been a critic of the DOT's failure to take corrective action against defective warning devices and poorly maintained grade crossings. In 1975, the Brotherhood of Railroad Signalmen and the Communication and Signal Division of the Association of American Railroads jointly prepared and recommended to the FRA the adoption of minimum installation, inspection, and maintenance regulations.

Unfortunately, the FRA has not adopted these regulations because of opposition from a major carrier within the AAR and FRA's determination that there were few grade crossing accidents caused by malfunctioning warning devices. The FRA's reliance on the statistical data was misplaced for obvious reasons.

Generally there are no investigations of defective crossings unless a death occurs, and there are no requirements for the reporting of malfunctioning crossing devices. The statistics upon which FRA relied were generated solely from accident reports submitted by the railroads. Relying on the railroad industry's self-generated statistics is like placing the fox at the gate to guard the chicken coop.

It is simply illogical and unsafe that large sums of Federal money should be spent on purchasing and installation of grade crossing protection equipment, but there are no requirements for inspection and maintenance of the installed equipment.

I would like to point out here, not in my statement, that the RLEA over the past years has done quite a bit of work, spent quite a bit of money, in coming before Congress and helping the AAR get Federal funds for highway crossings.

METAL HOOKS

Regarding metal hooks, last year a Federal appeals court ruled that the use of metal hooks to open coupler knuckles during a railroad's humping operation does not violate section 2 of the Safety Appliance Act. The court of appeals found that it was uncontested that the switchmen using the hook must insert some portion of his body between the cars. The court held, however, that section 2 of the Safety Appliance Act is not applicable to the procedure.

We are proposing an amendment which would make such practices subject to the provisions of the Safety Appliance Act, along with many other appliances under the Safety Act.

CARMEN TO PERFORM INITIAL TERMINAL TESTS AND INSPECTION

In 1981 the FRA's Administrator made it very clear that unless the AAR and the rail labor unions agreed to proposed changes in the power brake regulations, that he would impose his own changes. With that kind of subtle pressure, rail labor had no alternative but to negotiate the most effective amendments to the power brake rules without completely sacrificing the safety of train operations.

The Administrator, as well as the Associate Administrator for Safety, on numerous occasions stated that the amendments to the power brake rules adopted in 1982 would be strictly enforced and that the FRA would use all of its legal remedies to achieve compliance. The new rules were intended to place great emphasis on initial terminal tests and inspections by qualified employees.

However we feel we have been doublecrossed both by FRA and the railroads. Here, I had mentioned before that the present Administrator, Mr. Riley, had nothing to do with this agreement. And I would like to say Mr. Dempsey and Mr. Johnston, who will be witnesses here, really acted in good faith.

We thought we had a good agreement, had an understanding that they would maintain the safety. However, there are people out in the boondocks, out on the railroads, who have not seen fit to comply with this agreement, and that is one of the main reasons we are up here today.

Second, the railroads have used the new regulations as a basis for furloughing qualified carmen and requiring initial terminal tests and intermediate tests to be performed by unqualified and untrained operating crews.

The effect of the FRA's shutting its eyes to obvious violations, the carriers' use of unqualified and untrained employees to perform all the tests and inspections that are required by Federal law has created very dangerous train operations. The quality of the initial terminal tests and inspections and the intermediate inspections have significantly deteriorated, as opposed to the improvement contemplated by the rule changes.

Where no carmen are present, there is literally no inspection for hazardous materials violations or freight car standards violations. We have found that generally the equipment is deteriorating. It may not show up in the statistical data immediately, but it will not take long for the conditions of the cars to result in more and more injuries and deaths. The absence of proper initial terminal inspection presents further hazards to cities and towns through which these improperly inspected trains pass.

Therefore, we are proposing that carmen only be permitted to perform the initial terminal tests and inspections, as well as the intermediate inspections, which will also make them available to perform the freight cars and hazardous materials inspections, in accordance with our agreement.

STANDING

Two years ago, when we testified before your committee, we pointed out that the FRA had initiated a plan whereby safety violations discovered by the FRA inspectors would not be subject to

citations and penalties, as required by the Federal railroad safety laws. Rather, since that time the FRA has permitted a defect to exist until such time as a railroad corrects it. Only if a defect was not corrected within a time set by the inspector will the FRA consider a penalty.

The result of FRA's enforcement activity under this so-called system safety plan in 1982 demonstrate the effect of that policy. There were approximately 300,000 defects discovered by the FRA inspectors which were forwarded to Washington for enforcement. However, in only about 15,000 cases did the FRA seek to impose a fine. Statistics reveal similar results for 1983.

The RLEA filed a lawsuit in an attempt to require the FRA to impose fines for the said violations. The FRA argued to the court that we did not have standing to bring the lawsuit and the court held in the FRA's favor on that issue. The position of the FRA is that the railroad workers are merely bystanders and have no right to require FRA to enforce the safety laws.

We are faced with this same argument in virtually every case that is brought to require enforcement and compliance with the laws. We are proposing an amendment which would give the collective-bargaining representatives and workers standing to file a lawsuit in any case where the FRA has failed to enforce the Federal railroad safety laws. Otherwise, the FRA would have unlimited power to disregard all the safety laws in its wisdom.

HARASSMENT

In 1980 Congress enacted an amendment to the Federal Railroad Safety Act which had the intent of prohibiting harassment of rail workers by the carriers. Unfortunately, the amendment has been ineffective for several reasons.

First of all, the harassed employee could only pursue his or her claim under the Railway Labor Act. Since the passage of that amendment, we are unaware of any case that has been concluded through that process. It simply takes too long to resolve such a case under the Railway Labor Act procedures.

Second, in most cases the carrier does not fire the individual. Rather, he is harassed continuously on his job. However, the only remedy under the existing law is lost wages. Unless the employee in the appropriate case is allowed to recover punitive damages, the legislation will be of very little help.

I see the light has gone on, Mr. Chairman. I am not quite through here. We can answer a lot of your questions if you want.

Senator DANFORTH. That is all right. Please go ahead.

Mr. SNYDER. One noteworthy example of harassment should be brought to your attention. On the Santa Fe Railroad a former FRA safety inspector returned to work for the railroad. He began noticing obvious safety problems and reported them to the FRA. The Santa Fe learned of these complaints and subsequently fired the former inspector. The inspector has been without work now for more than a year. The act was designed to prevent such acts by the railroad, but the railroads recognize that the law affords little protection for the employees.

We have no alternative but to seek your assistance in putting an end to all the harassment tactics that continue to persist. Therefore, we are proposing a change in the law to allow punitive damages in the appropriate cases and to permit an employee, not the union, the option to file a suit in court for recovery.

SLEEPING QUARTERS

In 1976 Congress enacted an amendment to the Hours of Service Act which prohibited the railroads from providing sleeping quarters within the immediate vicinity of humping and switching operations in rail yards. This was a result of several deaths out in Decatur, Ill. The statute was designed to permit the carriers to phase out the existing sleeping quarters which were located inside the yard.

Very little has been done in the 8 years by the railroads to remove the sleeping quarters away from the yards. It is time, once and for all, for the railroad industry to recognize that the rail workers are human beings and deserve a place to sleep that is safe, quiet, clean, and sanitary.

We submit that the railroads have had more than ample time to provide sleeping quarters for the employees away from the yards. Therefore, we are proposing an amendment which would prohibit any sleeping quarters within rail yards.

We hope Congress will exert its influence on the Department of Transportation to better protect the nation's communities from hazardous material accidents.

In conclusion, we appreciate the committee's longstanding commitment to improving rail safety and we hope you are favorable to adopt the amendments we have proposed.

Thank you, Mr. Chairman. We are open to any questions.

Senator DANFORTH. Thank you, Mr. Snyder. As I understand it, you are presenting the prepared testimony for Mr. Wheeler and Mr. Bates as well.

Do either of you gentlemen have anything that you would like to add at this point, or can we just ask you questions?

Mr. WHEELER. I think you can just ask questions. I do not have anything to add to his statement.

Mr. BATES. That is fine with me.

Mr. SNYDER. This is on behalf of all the railroad brotherhoods, Mr. Chairman.

Senator DANFORTH. Thank you, Mr. Snyder.

On the question of the State enforcement program, you believe that that is an important program and if it turns out that it is jeopardized by the removal of the match it would be your view, as I understand it, that that would be a real loss?

Mr. SNYDER. Mr. Chairman, the State program, we have lived with it from the beginning. I was here when the law was passed in 1970, with the help of good Republicans and Democrats. We had Republicans who came to testify from Pennsylvania who were strongly supporting the State participation in this, and this is one of the reasons why we have it today.

We had to struggle through those years and the appropriations to carry out the intent of the law on a 50–50 basis. It has worked

well in some States; some States it has not. We still support the State program and are hoping to improve it with your help, and that is pretty well where we are with the States.

Senator DANFORTH. On the question of the hooks and where the sleeping quarters are and so on, my concern is I do not know that we have any knowledge on which to base a decision. It seems to me that these really are the kinds of questions which are either up to the administrative agency or, with respect to who does what kind of work, up to collective bargaining.

Am I wrong on that? Should Congress involve itself in this kind of very specific question, where we do not have any expertise to bring to bear on it?

Mr. SNYDER. We think so, definitely. And let us go back a little bit. The reason we came to the Congress was because many of the States did not do the job. We need it because this is interstate commerce, and as a result things are getting so bad—if you go back and study the history of railroad safety over the years and go way back, if it had not been for Congress intervening and coming along and providing what token of safety we do have now—it is no pleasure to us to come up here like this this morning here and ask you these things, as many other things.

For a period of time, we have been calling attention to the working force out there, and through the presidents that are here today and other presidents that represent these people as far as safety is concerned. We definitely think we have no other place to go.

Senator DANFORTH. It just seems to me that the problem is that it would turn Congress into a kind of superregulatory agency. Of course, there are people who believe in that. There are people who think, for example, that we should exercise legislative vetoes and so on, and that basically what Congress should do is to review what regulatory agencies have done and undo them.

But I have always thought that there is a distinction between the role of Congress and the role of regulatory agencies. Further, if we are going to be reviewing specific matters, such as how to couple railroad trains and where people sleep and so on, there just is no end to it and we would be overloaded, and we would be overloaded with things that we have no knowledge about.

Mr. SNYDER. Well, it is not the intent to overload. We find ourselves, Mr. Chairman, where the public is deeply involved in these issues. We are involved in the operation of these trains. A large percentage of the trains that operate in this country, a large percentage have hazardous material and those types of things, and they require most of the safety operations and inspections.

Let me just give you this little brief here. In good faith we sat down with the two gentlemen back here and the FRA, Mr. Johnston and Mr. Dempsey, we sat down with a committee from the engineers, from the carmen and myself and Mr. Mann here, in good faith on changes in the power brake law.

The power brake law was one of my first bills that I had the pleasure of working on in Congress under President Eisenhower, and it was passed here, and it needed some changes, some tuning up. We recognized that and we sat down in good faith to do this and still maintain a good degree of safety, because this is a very, very important item.

So anyway, we did. We arrived at, all of us in our debate and negotiations here, to come up with an agreement that would work, and we decided that there must be a thorough initial terminal inspection. We all agreed that it should be by the qualified employees, the carmen, where there were carmen employed now.

And we also agreed in cases where the UTU, my membership, on outlying jobs, outlying jobs for years where a little inspection was required, we would continue to do that. We would make what inspections we could, even though we were not really qualified, our people were not, until the train reaches the terminal and then it is broken up. And what I am talking about is local freight. It is broken up and then it goes in different trains, which receive a very thorough inspection.

We all agreed that this should be done, and I felt real good about it. I felt like in tightening up the law it meant about $100 million to the railroads in this respect: By relieving them, they could be more competitive in the piggyback service which they have, and it would provide more jobs and still retain that safety, because it was shown that about 75 percent of the rollingstock since 1959, it was roller bearings.

So they had a good case and we worked it out. However, in good faith—however, they have paid very little attention to Mr. Johnston and Mr. Dempsey. They acted in good faith on the agreement. Out in the boondocks we are getting all kinds of complaints that, as Mr. Wheeler noted over here, in your State, where they are based at, they have lost a lot of jobs that it was not, under this agreement, it was not proposed under this agreement to eliminate.

We have no other place to go but to come up here to require—and he can tell you what the qualifications of a carman are in this respect. We do need your help on this, and this is just a good example.

Senator DANFORTH. Let me ask just one brief question to Mr. Wheeler and Mr. Bates. Mr. Riley said that on the question of the inspection of the brakes that the issue was not a safety issue, but it was an economic issue. In other words, he said that it did not require any particular expertise to make the inspection, that any competent person could be trained to do so; and that he viewed it as mainly a question of who was to get the job.

I would like to have each of you comment on that question.

Mr. WHEELER. Senator, I certainly would like to comment on that. The carmen certainly do not allege that we are superhumans as far as training is concerned. But our people were hired and trained to perform this work. Now, the unfortunate situation is that they come along and take our people off the job, and FRA has sent personnel into these places to train people to perform the work that the railroads already have trained personnel there to perform.

We feel that this is just not the thing which the FRA was commissioned to do. Now, I can understand if the FRA adopted some standards that none of the employees were capable of performing, you have got to get out and show these railroads and teach those people how to do that job. But if you have employees who have already been trained to do this work for years, who have served a 3-

year apprenticeship, then it is highly unusual to bring your personnel, FRA personnel, in to train others to do it.

Senator DANFORTH. How long would it take to train a bright, able person such as, for example, Senator Exon to make the brake inspection?

Senator EXON. will comment on that later.

Mr. WHEELER. I think Senator Exon could learn that in about 2 minutes. For others it would take a lot longer.

Senator DANFORTH. Valuable testimony.

Senator EXON. I object.

Mr. WHEELER. The training period that carmen go through is normally 3 years. Now, this involves other things, but while the carman is being trained to inspect he is also trained to note any defects of the wheel or the brake beam or something like that.

The trained eye is a lot more acceptable to finding a defect than one who is not trained. And certainly, if you just want to train someone to do this individual job of giving the airbrake inspection and test, it does not take that long a period of time.

Now, there are two types of tests that are involved in these things. We have what is just an airbrake test where you charge the brakes just to a certain level and you reduce the pressure to see if the brakes apply on the rear car. That is an airbrake test, which is simple.

But on the other test, the actual terminal test, the carman or the inspector has to see that the brake system is charged, that there are no leaks, and after the reduction is made and the brakes are set he has to inspect to see that the brake shoes fit properly against the wheels, that there is no binding, that all the angle cocks are properly positioned, that the retaining valves are properly positioned.

And at the same time that the carmen are doing this, their trained eyes find other defects. Those are the things it takes a lot of training to do.

Senator DANFORTH. Mr. Bates, do you have a comment on that?

Mr. BATES. I probably do not know any more about a car than you do, so I will not even comment on it.

Mr. SNYDER. He is an expert on signals, on highway crossing signals.

Senator DANFORTH. I see.

Senator.

Senator EXON. Thank you, Mr. Chairman.

Gentlemen, thank you for coming here. I think this is a tremendously important issue and the testimony that you and others are giving can help us a great deal in deciding what should or should not be done in this whole area.

When you were talking about inspection and my ability to learn the job, I flashed back to a few years ago, when my father-in-law was a signalman for the Union Pacific Railroad. And I have had some firsthand experience, I want the chairman to know, not in car inspection, but in working out where the signals were.

In fact, it got so bad that my wife and I would refuse to go and visit her mother and father whenever it snowed, because whenever it snowed and we stayed at their house my mother-in-law insisted

that I get up and go out with Ed to walk up and down those tracks and make sure those signals were operating.

I never could pull the handles in the tower. I never could touch those boxes with all those mysterious keys. You know, that was a no-no. I never could have a screwdriver in my hand.

I wish, Mr. Wheeler, that my father-in-law had the same confidence in my ability to learn these things as you obviously do.

I was a toolbox carrier, that is all I did. And I was along essentially, Mr. Chairman, to make sure that my father-in-law got back to the tower and back to his car.

Speaking seriously, Mr. Snyder, you heard the earlier testimony by Mr. Riley that I understand indicated primarily that most, if not all, of the amendments that are being suggested could very conveniently be handled with administrative decisions within the FRA.

You indicated in your opening statement that you had had good experience with Mr. Riley thus far. I am interested, then, in your response to Mr. Riley's comments. Obviously, you testified that you thought the amendments were necessary. We do not like to pass laws up here, you know, unless we have to. And I would like to know a little bit more about the railroad providing rest and sleep facilities outside the railroad yard and the other issues raised.

I also wonder how far we should go. So I am here to be convinced on that. But basically, what is your answer to the fact that we could possibly handle these issues with in-house administrative decisions as Mr. Riley testified? Obviously, you think that, regardless of the success that you might have with Mr. Riley, overall the job just might not get done to the satisfaction of safety, which I agree with you gentlemen is a tremendously important consideration.

Mr. SNYDER. I would comment on that just briefly, and also Mr. Mann over here from a legal standpoint we have here. My association with John Riley before he came to the FRA was very good, and we are very high on him, Senator Exon. We are hoping that he will do a good job down at the FRA, and we are hoping that some of these things can be resolved.

But as I see it, John's in a position, I would think in all honesty, that he could not correct some of them, I think, because, as he testified here, if you listened to his testimony pretty closely, that we have some legal aspects here that are disturbing to our people here. And some of them, I think we can sit down with the FRA and even the carriers and work out some of these anyway. But some of them we cannot. Some of them we cannot, I do not think so.

Of course, we stand willing and ready to try to resolve these. We hate to have to come up here, but as you look at the history of the whole safety operation on the railroad, the Congress basically, through Democratic and Republican administrations, is the one that has given us relief. We had to come up here to get relief, and this is where we come this time, because these things have been very carefully monitored, these items we have got here. And you will see some others there that we did not bring up here.

But anyway, I would like Mr. Mann to comment on two or three of these things.

Mr. MANN. Senator, in the first place, these issues are not unique coming before you at this time. Over the history since the

enactment of the Rail Safety Act, Congress has in fact adopted safety amendments periodically where the need has arisen.

Senator Danforth, I know you were concerned whether you had the expertise. But I would like to point out, in a number of areas Congress has dealt with these areas. Crew quarters, for example. That was a congressional statute that prohibited crew facilities inside the yards.

Lighted markers on the rear end of trains. That was a congressional amendment. Tank car protection. That was because of the insistence of Congress that you now have protection on most jumbo tank cars.

Senator DANFORTH. Let me just respond to that if I can. I understand what you are saying, and there are times when Congress steps in. For example, it has been my position that Congress should step in with respect to highway safety, the reason being that for a period of time the National Highway Traffic Safety Administration was useless. That is, it was not only not promoting safety, it was going the other way. It was dismantling safety regulations. If an agency is not trying, if it is not making the effort to do what Congress asked it to do, then somebody has to do it and that means us.

But in the case where an agency is trying, where they do seem to be on the ball, where for example with respect to the crossing accidents, FRA is going back for a period of 2 years and reviewing all the accidents to find out what the cause is, I do not think that in that circumstance we should say: Well, you are in fact trying to do your job, you are exercising your judgment, but our judgment is better than yours. I am not sure our judgment is better.

Mr. MANN. Senator, there are several answers to that. If I may—and I do not want to give a speech. But first, if I may I would talk about standing for a moment. We have demonstrated very clearly that we are not talking about FRA prosecutorial discretion where we are seeking standing. We are talking about a situation where a Federal inspector discovers a defect, he gives the carrier a chance to correct it, they fail to correct it, that citation is sent to Washington, and not a darn thing is done about it.

Now, we pointed out 300,000 incidents just like that where they failed to enforce. We tried to get an impartial tribunal, the court, to tell FRA whether or not they were complying with the law of Congress. If a railroad worker cannot go to the court where he is exposed to injury and death and every one of these defects, then no one can.

Senator DANFORTH. Then under that theory, you would have the power to compel 300,000 lawsuits?

Mr. MANN. Mr. Chairman, you have to understand that Mr. Snyder is very tight with his legal money.

At any given time, throughout the country you will not have more than a half dozen lawsuits pending.

Senator DANFORTH. Well, I do not know. Further, take a prosecuting attorney. The prosecuting attorney has prosecutorial discretion. The prosecuting attorney does not file criminal charges against everybody against whom there is a complaint. He cannot do it. He would be swamped, the courts would be swamped. So what he has to do is to pick and choose and to pick the best cases,

the strongest cases, and the ones where he wants to have a deterrent effect in making the case.

If we had a situation where a citizen who was affected by an alleged crime could file a suit and in effect prosecute the case or force the prosecution of the case, the courts would just be inundated by lawsuits which may or may not have merit.

Mr. MANN. We agree 100 percent on that posture. But Senator, someone should be able to determine, some impartial tribunal should be able to determine, whether or not the Federal agency is complying with the statutes. Every one of the Federal railroad safety statutes says, for a violation there shall be imposed a fine of x dollars, every one of them. "Shall" is the key word. It is not "may impose"; it is "shall impose".

The question is whether or not they can let 300,000 defects go uncorrected.

Senator DANFORTH. How about OSHA violations? Is there a right to compel the filing of a lawsuit in an OSHA violation?

Mr. MANN. I cannot answer you, Senator.

Senator DANFORTH. I cannot either, but it would seem to me to be really extraordinary to have that sort of access to the courts and that ability to compel the direction of a Federal agency. I mean, the Federal agency would turn out to be a kind of minion of whoever wanted to push it around.

Mr. MANN. Well, I can assure you, Mr. Chairman, that rail labor is not seeking to flood the courts. All we want to do is to make sure that the will of Congress, the congressional statutes, are carried out the way Congress says they should be.

Senator DANFORTH. Here is what I think. I think what you should do is, when we have these authorization hearings or oversight hearings for FRA, you should marshall the evidence of how you think they have dropped the ball and really put it to them, and we will put it to them. It seems to me that to have an effective agency is more important than to try to grab the ball from the agency and either put it in the courts or put it in the hands of Congress.

Senator EXON. Let me follow up on that if I may, Mr. Chairman.

Did I understand you to say that there have been 300,000 violations?

Mr. MANN. That was in 1982, Senator. In 1983 there are similar numbers.

Senator EXON. To help me understand the picture that has been developing, what about 1981 and 1980 and 1979? Is this a pattern? Have you sensed a change in the regulatory and enforcement agency in just letting down on this whole important safety matter?

Mr. MANN. Yes, Senator. It is a new policy that went into effect in 1982 at the Federal Railroad Administration. It is known as the system safety plan, whereby for the first time, really, on a formal basis they are giving the railroads an opportunity to correct a defect once it is discovered. Now, you have to understand, if you are a railroad official what incentive do you have to comply with the Federal regulations if, one, they are going to give me a chance to correct it once they find it; and two, they know that my box car is not going to be inspected by an inspector more than once per year, if that?

And second, at the end of the line, even if you do send a citation to Washington, out of, for example, 91,000 track defects that were sent to Washington in 1983, only 50 violations were sought for fine.

The point is, yes, there has been a change and we are trying to correct that change.

Senator EXON. The same tracks that we are talking about are not only carrying freight, and the people who run these railroads, but I assume that these are the same tracks that are transporting passenger trains such as Amtrak.

Mr. MANN. Passenger trains and, more importantly, hazardous materials.

Senator EXON. I am concerned. Thank you for your testimony. I have no further questions.

Mr. SNYDER. Mr. Chairman, if I may, let me comment on the system's safety. This was put in by Mr. Blanchette. We told them from the beginning that this would not work. Let me just briefly tell you where each organization is coming from on the safety issues. It has always been the policy, and my instructions are, and I am sure it is from these other precedents, that when we have a safety violation or bad safety conditions on a local level, on the grassroots level, go to the appropriate officer and try to correct it, try to get it corrected.

I said, do not send it to me unless you have tried on the local level. Give them an opportunity to correct it. That is where it should be corrected, and eventually it will have to be corrected there. This is the way we have always worked.

Now, I get calls every day. My staff gets calls every day, and I am sure these other organizations, too. We get letters of complaint. We file them. Right now we have 135 from the UTU on file right now. These are because they could not settle these on a local level. Under the system safety plan, we told them it would not work because unless you have some degree of enforcement, you know, tell the railroad who is going to go back and double check to see after they have warned the carrier that this defect should be corrected, that this unsafe problem should be corrected.

Then you are taking up a lot of time for the inspector. You are taking up a lot of time and expenses of the Federal taxpayers' money by going back. They just do not go back. As a result of that, that is the reason you have the 300,000 but I do want to bring this across. Every effort is made on the local level.

You know, Mr. Chairman, I am too busy, too, just as you are too busy trying to run the Government without getting into all these little safety problems, but we have no other place to go.

Senator DANFORTH. Mr. Snyder, thank you. You are one of the busiest people that I know, and also one of the most effective people I know. We appreciate your being here, and we appreciate your associates being here, too.

Mr. SNYDER. Thank you. It is always a pleasure to do business with this committee.

[The statement follows:]

STATEMENT OF J. R. SNYDER, RAILWAY LABOR EXECUTIVES' ASSOCIATION

My name is J. R. Snyder. I am the National Legislative Director of the United Transportation Union. I am appearing today as chairmen of the Safety Committee

of the Railway Labor Executives' Association. Accompanying me are R. T. Bates, President, Brotherhood of Railroad Signalman, C. E. Wheeler, General President, Brotherhood of Railway Carmen of the United States and Canada, and Lawrence M. Mann, attorney for RLEA in this matter, The RLEA represents all the crafts of the railroad workers in this country.

As in years past, we wanted to provide you with our analysis of the safety statistics since the prior authorization legislation. However, the FRA has not provided us with the data necessary to make accurate evaluation. The statistical information which your Committee will receive from the FRA and AAR should be carefully analyzed by keeping the following points in mind:

1. The statistics do not reflect the reduction in employment during the last few years of more than 30 percent, and the discontinuance of many trains.
2. The fatalities to railroad employees have continued to rise even with the loss of employment.
3. The railroads alone provide the FRA with the statistics. That is, the railroads determine which accidents are to be reported and tell FRA what caused the accident or incident.
4. The monetary threshold for reporting an accident was increased last year to $4500 and the comparison between the prior years is not necessarily valid.
5. We are unaware of the FRA in its entire history ever fining a railroad for a violation of the Accident Reports Act. Therefore, the carriers have carte blanche in filing reports.
6. Where statistics are related to man hours worked, such figures should be adjusted to compare only the operating crafts and not included office personnel. Including all crafts will distort the actual casualty rates of those who are really exposed to injuries.

Concerning the authorization for fiscal year 1985 and fiscal year 1986, we urge your Committee not to reduce the authorization that was enacted for fiscal year 1984, $31,4 million, plus $2.9 million for the State Safety programs. This same authorization would allow for the hiring of 30 additional inspectors, 10 each for motive power and equipment, signals, and track. The Administration is seeking once again to get the state program. Fortunately your Committee has recognized the importance of retaining the states role in rail safety.

Now I would like to direct your attention to much needed changes in some of the safety laws. These proposed amendments will go a long way in reducing the hazards that exist on our nation's railroads.

Maintenance standards for grade crossings

Grade crossing accidents continue to be the highest cause of casualties on the railroads. The success since the earlier 1970's in reducing grade crossing accidents is attributable in large measure to Congressional financial support for upgrading crossings and greater public awareness of "Operation Life Saver". The Federal funded traffic control systems at crossings have greatly improved the safety for the traveling public. Still, only about one-third of the public grade crossings have active devices such as bells, lights, or gates. The overwhelming majority of crossings are marked only with a cross buck sign. Many have no protection at all. The Department of Transportation, in earlier studies, pointed out that if 15,000 crossings were provided with improved protection, accident costs would be reduced nearly three times that of the installation and maintenance costs of the improvement.

The ironic aspect of this critical safety area is that there are no federal regulations requiring adequate maintenance and testing of grade crossings. The National Transportaton Safety Board has been a critic of the DOT's failure to take corrective action against defective warning devices and poorly maintained grade crossings. In 1975 the Brotherhood of Railroad Signalmen and the Communication and Signal Division of the Association of American Railroads jointly prepared and recommended to FRA the adoption of minimum installation, inspection and maintenance regulations. Unfortunately, the FRA did not adopt the regulations because of opposition from a major carrier within the AAR, and FRA's determination that there were few grade crossing accidents caused by malfunctioning warning devices. The FRA's reliance on the statistical data was misplaced for obvious reasons. Generally there are no investigations of defective crossings unless a death occurs, and there are no requirements for reporting malfunctioning crossing devices. Moreover, the statistics upon which FRA relied were generated solely from accident reports submitted by the railroads. After a grade crossing accident has occurred, a railroad's potential exposure to liability is incentive enough for it to assert that the signal system was operating properly. Relying on the railroad industry's self generated statistics is like placing the fox at the gate to guard the chicken coop. Moreover, there are numerous

ways in which a signal system may fail to operate and not be detected in post-accident investigation. We will be happy to provide you with the technical reasons why defects may not be detected by a railroad in an investigation. It is simply illogical and unsafe that substantial sums of federal money should be spent on purchasing and installing grade crossing protection equipment, but there are no equivalent requirements for maintenance of the installed equipment.

Metal hooks

Last year a Federal Appeals Court ruled that the use of metal hooks to open coupler knuckles during a railroad's humping operation does not violate § 2 of the Safety Appliance Act. The applicable law provides:

> It shall be unlawful for any common carrier engaged in interstate commerce by railroad to haul or to permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

Many railroads have classification yards that contain an elevated area known as the "hump." This is the location where lines of freight cars must be separated and then pushed over the crest of the "hump" for re-assembling into a designated track. The issue in the lawsuit was whether or not the use of a metal hook developed by the Seaboard Coast Line Railroad in connection with the uncoupling procedures violated the law. The Court of Appeals found that it was uncontested that the switchmen using the hook must insert some portion of his body between the cars. The Court held, however, that § 2 of the Safety Applicance Act is not applicable to the procedure involved. The full opinion of the Court is published at 711 F.2d 233 (D.C. Cir. 1983).

We are proposing an amendment which would make such practices subject to the provisions of the Safety Appliance Act.

Carmen to perform initial terminal tests and inspection

In 1981, the FRA's Administrator made it very clear that unless the AAR and the rail labor unions agreed to proposed changes in the power brake regulations, that he would impose changes unilaterally. With that kind of subtle pressure, rail labor had no alternative but to negotiate the most effective amendments to the power of break rules without completely sacrificing the safety of train operations. The Administrator, as well as the Associate Administrator for Safety, on numerous occasions stated that the new rules would be strictly enforced, and that FRA would use the full panoply of its legal remedies to achieve compliance. The new rules were intended to place great emphasis on the initial terminal tests and inspections by qualified employees. However, we feel we have been double-crossed both by FRA and the railroads. In the first place, the FRA has not required strict compliance with the regulations. Trains regularly leave terminals with little or no inspections, and many contain defective cars. Secondly, the railroads have used the new regulations as a basis for furloughing qualified carmen, and requiring initial terminal tests and intermediate tests to be performed by train crews. The train crews, generally, have not been given adequate training nor are they instructed on the full responsibilities and demands of the federal laws. Carmen are recognized as being qualified to perform the tests and inspections, and they have been given rigorous training by the carriers before being permitted to perform safety tests and inspections. The effect of the FRA's shutting its eyes to obvious violations, the carriers use of unqualified and untrained employees to perform all the tests and inspections that are required by federal law, has created very dangerous train operations. It is obvious from anyone knowledgeable about this issue that the quality of the initial terminal tests and inspections and the intermediate inspections have significantly deteriorated, as opposed to the improvement contemplated by the rule changes. Where no carmen are present, there is literally no inspection for hazardous materials violations or freight car standards violations. We have found that generally the equipment is deteriorating. It may not show up in the statistical data immediately, but it will not take long for the conditions of the cars to result in more and more injuries and deaths. The absence of proper initial Terminal inspection presents further hazards to cities and towns through which these improperly inspected trains pass. Also, we have affidavits from designated legal counsel throughout the country handling negligence cases who have discovered a large increase in accidents caused by safety defects which occurred since the adoption of FRA's lax enforcement policies.

Therefore, we are proposing that carmen only be permitted to perform the initial terminal tests and inspections, as well as the intermediate inspections, which will also make them available to perform the freight cars and hazardous materials inspections.

Standing

Two years ago when we testified before your Committee we pointed out that FRA had initiated a plan whereby safety violations discovered by the FRA inspectors would not be subject to citations and penalties as required by all the federal railroad safety laws. Rather, since that time the FRA has permitted a defect to exist until such time as a railroad corrects it. Only if the defect was not corrected within a time set by the inspector will the FRA consider a penalty. Common sense dictates that the carriers no longer have any incentive to comply with the regulations. They simply can wait until a FRA inspector happens to discover a defect, and then make necessary repairs. Moreover, the safety inspectors are spread so thin throughout the country it is virtually impossible for them to follow-up on defects for many weeks. With respect to defects found on cars and locomotives there are no followups.

When the FRA was created, the primary functions was for it to enforce the federal railroad safety laws. Congress is wasting millions of dollars for maintaining that agency if the laws are not going to be enforced. Your Committee is unable to watch the day-to-day operations of the FRA. Therefore, there must be very clear and distinct directions from you that the federal railroad safety laws are to be strictly enforced.

The results of FRA's enforcement activity under this so-called System Safety Plan in 1982 demonstrate the effect of that policy. There were approximately 300,000 defects discovered by FRA's inspectors which were forwarded to Washington for enforcement. However, in only about 15,000 cases did FRA seek to impose a fine. The RLEA filed a lawsuit in an attempt to require the FRA to impose fines for the said violations. The FRA argued to the Court that we did not have standing to bring the lawsuit, and the Court held in FRA's favor on that issue. The position of the FRA is that the railroad workers are merely by-standers and have no right to require FRA to enforce the safety laws. We are faced with this same argument in virtually every case that is brought to require enforcement and compliance with the laws. We are proposing an amendment which would give the collective bargaining representatives and the workers standing to file a lawsuit in any case where the FRA has failed to enforce the federal railroad safety laws. Otherwise, the FRA would have unlimited power to disregard all of the Safety laws in its infinite wisdom. If the railroad workers who are exposed to injury and death daily cannot bring an action, then no one can. The workers are the victims of the failure to enforce as evidenced by the fact that 10% of the workers each year are injured. Obviously there must be some semblance of accountability of the FRA to the public.

Harassment

In 1980 Congress enacted an amendment to the Federal Railroad Safety Act which had the intent of prohibiting harassment of rail workers by the carriers. Unfortunately, the amendment has been ineffective for several reasons. First of all, the harassed employee could only pursue his or her claim under the Railway Labor Act. Since the passage of that amendent, we are unaware of any case that has been concluded through that process. It simply takes too long to resolve such a case under the Railway Labor Act procedures. Secondly, in most cases the carrier does not fire the individual; rather he is harassed continuously on his or her job. However, the only remedy under the provisions of the amendment is lost wages. Unless the employee in the appropriate case could recover punitive damages, the legislation will be of little help. One noteworthy example of harassment should be brought to your attention. On the Santa Fe Railroad a former FRA safety inspector returned to work for the railroad. He began noticing obvious safety problems, and reported them to the FRA. The Santa Fe learned of these complaints and subsequently fired the former inspector. The inspector has been without work now for more than year. The Act was designed to prevent such acts by a railroad but the railroads recognize that the Amendment has little protection for the employees.

Another aspect of harassment that particularly angers the railroad workers is that FRA safety inspections have been revealing to the carrier officials the names of employees who submit complaints of safety violations to the FRA.

We have no alternative but to seek your assistance in putting and end to all of the harassment tactics that continue to persist. Therefore, we are proposing a change in the law to allow punitive damages in the appropriate cases, and to permit an employee (not a union) the option to file a suit in court for recovery.

Sleeping quarters

In 1976 Congress enacted an amendment to the Hours of Service Act which prohibited the railroads from providing sleeping quarters within the immediate vicinity of humping and switching operations in rail yards. The statute was designed so as to

permit the carriers to phase out the existing sleeping quarters which were located inside the yards. Very little has been done in the eight years by the railroads to remove the sleeping quarters away from the yards. Moreover because of the limitations on major reconstruction, the sleeping quarters inside the yards generally have been left in disrepair. It is time, once and for all, for the rail industry to recognize that rail workers are human beings and deserve a place to sleep that is safe, quiet, clean, and sanitary. We submit that the railroads have had more than ample time to provide sleeping quarters for the employees away from the yards. Therefore, we are proposing an amendment which would prohibit any sleeping quarters within rail yards.

Hazardous materials

Rail shipments of hazardous materials continue to plague the public. There have been numerous past accidents involving the release of toxic or flammable materials which have resulted in injuries, death, property damage, as well as mass evacuation. The FRA recently issued a final rule on required improvements in certain jumbo sized tank cars. The RLEA does not think that the new rulemaking promulgated on January 27, 1984 goes far enough. There are approximately 10 to 15 thousand small sized tank cars that carry the same products as the jumbo tank cars which, generally are much older than the jumbo tank cars, and are not covered by the new regulation.

In addition, nuclear waste shipments are expected to increase significantly as nuclear power plants reach waste storage capacity. Previous fire tests on railroad nuclear waste containers have indicated that in some railroad fires, these containers can emit harmful radiation. Rail shipments of cryogenic materials are also expected to increase significantly. Many such materials are toxic and flammable but there are no requirements that the cars have fire protection. Also, one particular hazard to the crews is that many of the materials used in the interiors of locomotive cabs and cabooses are highly flammable or generate toxic fumes when heated. Generally, these cabs have inadequate fire detection and subpressure systems.

We recognize that there are cost factors in providing hazardous materials protection for rail cars. However, Congress must exert its influence on the Department of Transportation to protect the nation's communities from hazardous material accidents.

Alcohol and drug abuse

One of the most difficult areas of rail safety concerns alcohol and drug abuse. Studies have demonstrated that there are few workers who actually are under the influence of alcohol or drugs when they are working. Nevertheless, the problem is significant enough that all interested parties are making a determined effort to improve the existing methods of dealing with abusers. There are no easy answers, but we feel that the emergence of Employees Assistance Programs throughout the industry are proving to be very effective in the detection and treatment of alcohol and drug users. In November, the FRA sponsored a planning conference on Voluntary Alcohol and Drug Abuse Programs. The conference was attended by all major railroads and rail labor organizations. The conference has been further implemented by regular meetings throughout the country for the purpose of evaulating different programs on various railroads. We congratulate the efforts of the FRA for this very positive step. Hopefully, within the very near future we will have a solution that is accepted by all parties concerned.

Safety training

As a final matter I would like to discuss safety training briefly. FRA's recent initiatives in both improving the training offered to its safety inspectors and in encouraging the industry to look at new methods of safety training for its employees are to be commended. Safety inspectors have a huge responsibility and in many cases little time to make adequate inspections. It is important that they are well trained in spotting problems and taking corrective steps. They also need to remain abreast of revisions to regulations and as much as possible practice consistent enforcement procedures.

The safety training research and development begun by FRA with rail labor and management are headed in the right direction. Techniques are now available through the use of micro-computers and videodiscs to enhance a given employee's understanding of safety rules and procedures. This particularly true for the hazardous material training requirements of rail operating personnel. The pilot program recently conducted on the Port Terminal Railroad Association in Houston, Texas has shown that rail employees respond well to computer assisted instruction. Rail

labor has been actively involved in these efforts from the beginning and will continue their involvement as more definite course materials are developed.

In conclusion we appreciate your Committee's long standing interest in improving rail safety, and hope you will favorably adopt the amendments we are proposing.

[The following information was subsequently received for the record:]

QUESTIONS OF THE MAJORITY AND THE ANSWERS THERETO

Question. Are you aware of any cases that have been brought under the 1980 Safety Act prohibiting railroads from dismissing or discriminating against employees who complain about safety violations or refuse to work in dangerous situations? What is the status of any such cases?

Answer. As we pointed out in our testimony, there are numerous cases where employees have been discriminated against when they complain about safety violations or refuse to work in dangerous situations. These cases are processed through the arbitration provisions of the Railway Labor Act and, in the short time available, it would be impossible for us to provide you with all of them. One such case was pointed out to you in my testimony. In addition, I am enclosing copies of correspondence dealing with several cases involving UTU members. Based upon my conversations with representatives from other crafts, these examples are typical throughout the industry.

Question. Are there any other procedures for addressing cases like these? For example, do collective bargaining agreements provide remedies for such cases? How many cases have been brought under these other procedures?

Answer. Collective bargaining agreements do not provide for remedies in cases where employees complain about safety violations or refuse to work in dangerous situations. If they did, it would not have been necessary for the legislation which was enacted in 1980 prohibiting discrimination in such instances.

Question. You testified that the 1980 Act has been ineffective, because employees must pursue claims under the Railway Labor Act and employees cannot get punitive damages. Are there statutes dealing with non-rail employees that permit aggrieved employees to go directly to court and to collect punitive damages?

Answer. We have not searched comparable statutes dealing with non-rail employees to determine whether or not employees who are discriminated against may collect punitive damages and pursue their remedies in court. We have made you aware of the seriousness of the problem in the rail industry, and that the remedies provided in the 1980 Act are totally inadequate. Unless Congress makes the requested changes, discrimination will continue unabated in the rail industry.

Question. Do you have any comments on FRA's proposed amendment to the Railroad Safety Act that would confirm FRA's authority to seek enforcement of a subpena or order issued under that statute through a proceeding in an appropriate federal district court. FRA says this is a technical amendment, prompted by the absence of such a provision in existing law, which would remove any doubts concerning FRA's authority to enforce its subpenas and orders.

Answer. The RLEA has no objection to the FRA's proposed amendment relating to enforcement of its subpenas or orders.

Question. In testifying before the Committee, Mr. Riley indicated that he had encouraged the Brotherhood of Railroad Signalmen and the AAR to get together to create an inspection system that would address the rail-highway crossing problem and not overtax safety resources. Have you followed up on Mr. Riley's recommendation? If not, why not? What are the chances of you working out something in this area?

Answer. With respect to the Brotherhood of Railway Signalmen and the AAR meeting relative to the proposed regulations on rail-highway grade crossings, Mr. Bates and I both asked Mr. Dempsey whether a meeting would be fruitful. He said that he would get back in touch with us. RLEA is ready and willing at any time and at any place to discuss not only this issue but any issue affecting rail safety.

QUESTIONS OF THE MINORITY AND THE ANSWERS THERETO

Question. Rail labor has proposed an amendment mandating that only carmen do initial and intermediate brake inspections. In explaining the need for this amendment, you have indicated that an earlier agreement between FRA, rail management, and rail labor regarding revisions in the power brake regulations has not been realized, and that your amendment would ensure that that agreement was

indeed implemented. What was that agreement? Are you suggesting that the regulations as finally approved do not reflect that understanding or that the regulations as implemented do not reflect the agreement?

Answer. With respect to the question concerning the background of the agreement to revise the power brake rules that was submitted to FRA, I am enclosing some relevant correspondence, as well as my testimony before the FRA on the proposed changes. As you will observe, we have always considered that the carmen would perform the initial terminal tests and inspections at the initial terminals. In addition, it was unanimously agreed to by both the AAR and the RLEA that the single most important factor in the changes would be the thorough inspection of all trains prior to departures from the initial terminal. The quality of the inspections of trains are much worse today than they were prior to the adoption of the new rule.

Question. You have also proposed an amendment which would have the effect of precluding the use of metal hooks in the uncoupling of cars. The FRA and the rail industry argue that the use of metal hooks promotes overall safety in the humping yards and particularly for those employees who are working in the "bowl" of the yard. What is your response to this argument?

Answer. Concerning the use of metal hooks in uncoupling of cars, the position of the FRA and the railroads is simply "poppycock". I am attaching two recent telegrams which I received from the State Directors in Georgia and North Carolina, where the hooks are used on the Seaboard Coastline Railroad. The carrier's statement that it has saved money is specifically refuted by the telegrams. Concerning promotion of overall safety by the use of the hook also has no merit. In the first place, there were more injuries than the railroad has admitted, and secondly, there have been numerous near misses since the institution of this procedure. Furthermore, the safety problems in the bowl have significantly been reduced by the adoption by the Federal Railroad Administration of the recent "blue flag" covering trainmen who are required to work on, under or between rail cars. For your background information, I am enclosing a copy of the recent rulemaking.

Question. Another of rail labor's proposed amendments would grant an employee or the union representative standing to seek a judicial mandate for FRA enforcement. FRA is opposed to this amendment and argues that such a provision would misappropriate its resources to lawsuits pursued under the proposal. In light of your concern that FRA is not thoroughly investigating complaints or enforcing against violations, and given that FRA has only so many resources, are you not concerned that your proposal might direct resources as FRA fears and thus exacerbate rather than improve the enforcement effort at FRA?

Answer. There is absolute no way that the unions' proposal for standing would exacerbate rather than improve enforcement efforts at FRA. In the first place, the position of FRA presumes that we would be in bad faith and file too many lawsuits against them. Rail Labor institutes litigation only as a last resort, and I can assure you we pay close attention to legal fees. Concering the use of FRA's resources, their primary function is to enforce against violations. It's obvious that they are not doing their job when 300,000 cases go out the window even after the railroads had been given a second chance to correct the violations. In 1983 for example, there were over 91,000 track violations that the FRA inspectors forwarded to Washington for enforcement. The FRA only sought fines in 50 cases. Unless Congress makes it clear that the unions have standing to determine whether or not the FRA has complied with the Federal laws and regulations, the FRA will have no accountability to anyone. Congress is not in a position to determine whether or not FRA is complying or not complying with the laws by simply conducting oversight-type hearings every two years. Moreover, that is not the role for Congress. The courts are the appropriate forum to determine whether or not the laws have been complied with. That is all the RLEA is asking in its proposed amendment.

Senator DANFORTH. Next we have Mr. William Dempsey, president of the Association of American Railroads.

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS; ACCOMPANIED BY WILLIAM HARRIS, VICE PRESIDENT, RESEARCH AND TEST; AND WILLIAM JOHNSTON, VICE PRESIDENT OF OPERATIONS

Mr. DEMPSEY. Mr. Chairman, I am accompanied by Mr. William Harris on my left, who is vice president in charge of research and

test for the association, and by Mr. William Johnston on my right, who is vice president of operations and maintenance.

Normally, if it had not been for the proposals of the unions, I would simply spend a few minutes relating our view of railroad safety and telling you something about what is going on in research and test. For example, exciting things are going on at our test center in Pueblo that, as you know, we have taken over from FRA, and at our laboratories in Chicago. Should you wish to have Dr. Harris and Mr. Johnston discuss any of those matters, of course, they would be delighted to do it.

But the union proposals really have deflected me from that course, and I really must spend the little bit of time I have addressing these, because they are very important to the rail industry. If adopted, they would be enormously burdensome. We think that as a matter of safety they are wholly without merit, and that is a matter that you have already discussed at some length in terms of the appropriate division between administrative agencies and the Congress. They are misguided.

Senator Exon, you were not here at the beginning of Mr. Riley's testimony, and so I would like to review just for a moment what has actually been happening in the rail safety area in terms of fatalities, train accidents, and that sort of thing, because it really has been quite dramatic. I will take the period from 1978 to 1982. Total railroad fatalities down 32 percent. Employee fatalities down 36 percent. Total injuries down 44 percent. Employee injuries down 46 percent. Train accidents down 60 percent.

Senator EXON. If I might interrupt you for a moment, are those just raw figures, or are they adjusted in some way?

Mr. DEMPSEY. These are raw.

Senator EXON. Are the miles traveled by railroad up or down during that period? Would not that have some effect on these numbers?

Mr. DEMPSEY. I will let Mr. Harris address that, because he is more familiar than I am.

Mr. HARRIS. We have had an opportunity to do the kind of normalizing analysis that you speak of. Whether we look at this in terms of raw numbers or adjusted by ton miles or whatever normalizing figure, there are essentially the same dramatic reductions. These reductions are not just a chance occurrence resulting from the fact that traffic has changed in its flow at all. They are very real.

Mr. DEMPSEY. The same sort of picture exists with respect to the transportation of hazardous materials. We have had a decrease of 41 percent in train accidents involving the release of these materials. We have not had any fatalities related to the transportation of these materials in 1981, 1982, or 1983.

There are a number of reasons for this dramatic progress. One was mentioned by Mr. Riley, and it is the very, very much improved capital expenditures by the rail industry during this period of time. We have virtually no deferred maintenance any more on our main line tracks. Our track system is in the best condition it has been in decades. Also, I think FRA can take credit for it. We believe management can take credit for it, and we certainly give

appropriate credit to our dedicated employees and to the union representatives.

Having said that, I have probably said the last thing that Mr. Snyder, my good friend, would like to hear me say this morning. The figures indicate in a gross sort of way, at least, that no significant legislative action is necessary except for the reauthorization of the safety bill, and, of course, observation of FRA and what it is doing.

I probably do not have enough time to get through all of the labor issues, but let me at least begin with some of them. I will begin with the carmen issue. As Mr. Riley said, this is fundamentally an economic issue. It really has nothing to do with safety. Let me begin with the new regulation that relates to the carmen issue that was adopted last year based upon, as Mr. Snyder said, an agreement between rail management and rail labor.

Mr. Snyder, in all of my dealings with him, has always acted in utmost good faith, and I am sure always will. So I do not question that at all, but I do have a different view of what was agreed to, and I will turn simply to what the regulations say as evidence of that.

But let me say also that he is certainly correct in his statement that great emphasis was put upon the importance of an initial terminal inspection during the course of the deliberations. But this issue as to who was to perform the inspection was the very last issue that was outstanding; the last to be resolved. The carmen representative was there during these discussions.

What the carmen wanted was to have the carmen perform the inspections at all times or at least to have the carmen perform the inspections at the locations where they were employed at that time. We said no, and the FRA agreed. And finally, the carmen agreed. So what the regulations provide is that a qualified person must perform the inspection. Then it goes on to say this:

> Where a carman is to perform the inspection and tests under existing or future collective bargaining agreements, in those circumstances a carman alone will be considered a qualified person.

That takes one then to the existing collective bargaining agreement which began in 1964 and which was updated in 1975, and which we will provide to the committee. What it says is essentially the same thing, in the sense that where a carman is employed the carman will perform the inspection. But, it provides that a carman will be employed or that the railroad would be obliged to employ a carman only where there is sufficient work for a carman, and that is given a very liberal interpretation.

So, my understanding is, if there is as much as 4 hours' work in an 8-hour trick, that is sufficient work, and the railroad must employ carmen, but if there is less than 4 hours, then a carman need not be employed in any of those circumstances. A trainman performs the inspection. Therefore, what really is at stake here is that the unions are seeking Congress to direct railroads to employ carmen where there is not sufficient work to employ a carman.

So it is not a question of whether the carmen or the trainmen perform the work where carmen are employed, because there the carmen do perform and must perform the work. It is a matter of

the Congress requiring the railroad industry to hire countless numbers of carmen at places where there is not sufficient work to justify hiring a carman. That is really what is at stake here.

That underscores what Mr. Riley said, that this is an economic issue and not a safety issue. Trainmen have been performing this work for decades where carmen are not employed.

Now let me consider the iron hook question for a moment. Here, as you know, FRA considered the matter and concluded that there was no basis in terms of safety for requiring that the use of the hook be discontinued, and indeed indicated that it might very well be more hazardous to issue a regulation of that sort. As Mr. Riley indicated, in the absence of this kind of operation, sometimes the couplers do not completely open, and therefore the cars do not couple, and therefore a switch crew has to go down there in the bowl, which is the most congested and most dangerous part of the railroad yard, and manually perform the operation between the cars.

Incidentally, I draw to your attention the court of appeals' opinion because it was a very long, exhaustive, and, I consider, persuasive opinion. That led the court of appeals to say this:

> As we have observed, the bowl is a hazardous area, and the hook procedure may contribute substantially to the safety of all the yard employees by reducing the number of couplings that must be made in the bowl. Conspicuously absent from appellant's presentation is any reference to a means or a method other than automatic realigning devices, which are still in the experimental stage, that is as safe or safer than the hook procedure. It would make scant sense to read legislation designed to promote safety to force elimination of a procedure that may in fact reduce hazards.

There is something else of note in here with respect to this issue, and that is that once again we have an economic underpinning, because what happens when you use the hook in a particular yard (the one that was at issue here was on the Seaboard), the railroad was able to eliminate two or three switch engines and their crews. That is what is at stake here, and as the Court pointed out, very substantial amounts of money are involved.

In that yard alone, over $600,000 a year was saved by the railroad because of the ability to eliminate those then unnecessary crews. So far as the safety evidence is concerned, the Court noted that in the period that there was evidence relating to safety, and I quote the Court again, "We note that only three reportable injuries had occurred in handling over 2.5 million cars during this period. This record translates into an injury rate of one per 1.2 million uses of metal hooks."

And then, and this is important, I think, "None of the injuries was permanently disabling, and there have been no fatalities, and moreover, all three injuries resulted from employees having fallen away from the moving cars. All three injuries had resulted from hooks breaking while in use, and no injuries had occurred since structural improvements were made to the hook."

Now, that is the kind of detailed factual examination that the FRA makes, and I submit that their conclusion is amply warranted by the evidence, and there is no occasion whatever for this Congress to conclude that the FRA is not doing its job and to intervene.

I see that my time is up, and I will simply rest with those as two illustrations of the baseless character of the proposals that have been made.

Senator DANFORTH. Mr. Dempsey, thank you very much. I have one question for you. Do you have a position with respect to the State enforcement program, its utility, and whether it would be continued without matching funds, and whether it should be continued?

Mr. DEMPSEY. Well, I certainly do not have any position as to whether it would be continued without matching funds. I have no basis for making a judgment on that one way or the other.

As for its utility, our feeling always has been that we would prefer to have the inspections done by Federal inspectors. The reason is that we are confident that in those circumstances there will be quality control, that the inspectors will be well trained, and that there will be uniformity in the inspection procedure, and that is terribly important to us.

But we have never resisted the State programs at all, only insisted as best we can that the State inspectors be as qualified as the Federal inspectors.

Senator DANFORTH. Are they, in your opinion?

Mr. DEMPSEY. I would ask Mr. Johnston to comment.

Mr. JOHNSTON. Yes, Senator, in many instances. However, because of the pay scale at the State level, which is much less than at the Federal level, it is difficult to get really and truly good, qualified people. That is a problem for the States.

Senator DANFORTH. Thank you.

Senator Exon?

Senator EXON. Thank you, Mr. Chairman.

Mr. Dempsey, let me ask you what your opinion is specifically of these claims of 300,000 safety violations or alleged safety violations. How do you group those? Are those all frivolous and therefore unnecessary and unworthy of attention from the FRA?

Mr. DEMPSEY. Well, Senator, I do not know what they are, and I would be in no position to comment with particularity, but one can speculate about it. So far as we are concerned, the FRA is doing an increasingly better job. We do not share the union's view with respect to the utility of the systems analysis approach, for example. It was that sort of approach that was, rather than concentrating simply on finding individual violations here and there, that was recommended, as I recall, by the Office of Technology Assessment in its exhaustive and, we think, quite able appraisal of the whole rail safety system.

What it does is to use the limited facilities of the FRA in the most efficient way possible, so that they go on a railroad and they say, look, what we really want is your full cooperation here. We want to completely examine your safety operations. Then what it does is give them that sort of picture.

They make their recommendations, and they make it to the top excecutive level. That is terribly important, because if you get the attention of the top executives at a railroad who are committed to safety but who have limited amounts of time, if you get their attention, then something can be accomplished.

Now, in the course of that, Senator, violations are discovered that otherwise would not be, because everything is thrown open to the FRA inspectors. Now, to the extent that any of these violations are discovered in the course of that kind of an inspection, obviously, it seems to me that the prudent thing for FRA to do is, except in a case in which the railroad is obviously culpable, not to press very hard, because they have got to get the cooperation of the railroads in this kind of enterprise.

Then, in addition, I am sure that many, if not most of these violations—anyone would think—were minor violations, and what is the sense of the FRA expending their enforcement resources in those kinds of circumstances? As Mr. Riley said, they do exercise their discretion, and quite properly so. If they have got a railroad that they think is not performing as well as it should, they press harder. If they have got one that they think is making determined efforts, they exercise the discretion the other way.

One would have to look at all of those 300,000 cases to say much more than that, it seems to me, but I agree with the Chairman's observation that the way to assess whether or not the FRA is doing its work is to have all of these data brought forth in the course of a hearing, at which the FRA and the railroads are able to look at the evidence and have a full opportunity to comment on it.

Senator EXON. I think that is a good suggestion. I would just say, Mr. Chairman, that when I hear these raw data that we have had a dramatic increase in safety in the railroads, you know, that is one side of the story. Obviously, if the facts that you give us are accurate, then they should be refuted in some way by those who think dramatic changes should be made. So I would hope for the record if it is not too big a job on your part, that you could weight the data for us as to ton miles or number of cars. I do not know what your terminology is.

Mr. DEMPSEY. Surely.

Senator EXON. You know, I am on the Aviation Subcommittee of this Commerce Committee, and I do not think there is much question but that we have had some excellent safety improvements in the airlines. From a safety standpoint I think they present a pretty good case, but I am worried about some of the things that are happening today, such as what appears to be an increasing number of blowouts of tires on airplanes landing or taking off.

The cause might be bad tires. It might be that they have not been inspected properly. Or it might mean that management is running a risk of keeping those thinner and thinner tires on those airplanes longer than they should, the same way that I might flirt with difficulty if I let my tires become too thin on my automobile. Incidentally, it was not tires this morning that caused my difficulty in arriving.

You know, I think this is an important issue that we should get into, and if you can give us some weighted figures on this, and if you would not object to supplying that to the railroad brotherhoods for their response as well, I think that might be helpful.

Mr. DEMPSEY. We would be delighted to do that, Senator, and we will do it promptly. We have figures available.

I think one more thing is worthwhile saying about the asserted 300,000 alleged violations. Before the track standards were amended—And when were they amended, Bill?

Mr. JOHNSTON. About a year and a half ago.

Mr. DEMPSEY. About a year and a half ago. As the amendments disclosed, there were countless regulations that really did not have anything significant to do with safety. The FRA as part of its ongoing process to strip the books of unneeded regulations stripped the books of those regulations, but everyone recognized that, and many of these might have been due to that, because, as I say, if you went over the railroad with that kind of regulation book in hand, you could find violations. There is no question about that. I mean, you could shut the railroad down if you fine them for every one of those violations.

Then there is another kind of violation, for example. We think it ought to be rewritten, but there it stands. If a defect is found in a car, for example, in an inbound yard, before the railroad has had a chance to inspect it, it is a violation. There is no mental or knowledge element required by the regulation, but the FRA will normally not prosecute that kind of violation because the railroad has not had an opportunity to examine the car. Unless they think that the railroad in the outbound yard was not given an adequate inspection. Well, that is the kind of discretion they have, and it is the kind they should have.

Senator Exon: Just let me add to this. Again, I do not have a handle on this, but I assume, maybe incorrectly, that these 300,000 violations were more on moving stock, whether it is cars or locomotives, as opposed to track. You know, you could have the safest track in the world with no imperfections anywhere, but if the rolling stock moving over that is not properly inspected, you could have safety breakdowns. So you have not only the track, but you have the rolling stock moving over those tracks. Do you agree?

Mr. DEMPSEY. Yes. And I do not know what they were. I had the impression, though, that they were track violations. I do not know. Do you?

Mr. JOHNSTON. I strongly suspect it was both.

Senator EXON. Some of both?

Mr. JOHNSTON. Yes.

Senator EXON. Well, I think that should be broken out so that those of us who are not experts in this area can at least begin to understand it. Thank you.

Senator DANFORTH. Thank you, sir.

[The statement follows:]

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads welcomes the opportunity to comment here today on the reauthorization of appropriations to carry out the purpose of the Federal Railroad Safety Act.

My name is William H. Dempsey and I am President and Chief Executive Officer of the AAR. Appearing here with me today are William J. Harris, Vice President of Research and Test, and A. William Johnston, Vice President of Operations and Maintenance.

The railroads which are members of the Association employ 94 percent of the workers, produce 97 percent of the freight revenue and operate 95 percent of the line-haul trackage in the United States.

The railroads are proud of their safety record, and with that pride goes a commitment to constantly improve and make the industry's enviable safety record even better. Since we do not live or operate in a totally risk-free environment, that commitment compels consideration of safety factors as an inherent element in virtually every facet of rail operations, rail equipment and plant design, and railway construction and maintenance. Importantly, the success of that commitment is reflected in a dramatic improvement in rail safety as demonstrated by the casualty and train accident statistics over the last several years.

Between 1978 and 1982 the number of fatalities and injuries per million man hours worked and train accidents per billion gross ton miles declined dramatically.

Total railroad related fatalities decreased 32 percent from 1978 to 1982.

Railroad employee fatalities decresed from 131 in 1978 to 84 in 1982; a reduction of 36 percent.

Total railroad related injuries also dropped dramatically in recent years. From 1979 to 1982 there was a 44 percent decrease in reported injuries.

Railroad employee injuries decreased from almost 66,000 in 1979 to under 36,000 in 1982; a 46 percent reduction.

Reported train accidents decreased 60 percent from 1978 to 1982.

FRA preliminary accident data for 1983 indicate that the trend is still continuing downward.

Railroad employee fatalities in 1983 were down almost 30 percent from the 1982 figure.

Reported injuries to rail employees in 1983 were 16 percent lower than 1982.

Railroads have always been the safest mode of surface transportation for the carriage of hazardous materials and there has been a significant decrease in hazardous materials incidents.,

Releases of hazardous materials in train accidents decreased 41.0 percent from 1978 to 1982.

There were no fatalities resulting from rail transportation of hazardous materials in 1981, 1982 or 1983.

Highway/Rail grade crossing accidents remain the largest single cause of rail-related fatalities. That category overshadows all other causes by a considerable margin. Fortunately, however, there has been an astonishing improvement in this area also. Based on statistics available for the first eleven months, FRA is projecting a total of 482 fatalities involving motor vehicles at public crossings for 1983; down from 525 in 1982. This will be the fifth consecutive all time low for fatalities since records were first kept in 1920! Over the nine year period from 1974 through 1983 there will be about a 58 percent reduction in public grade crossing accident fatalities involving motor vehicles. This reduction was achieved despite an increase in exposure of approximately 8 percent measured in terms of both train miles and highway vehicle miles.

This remarkable improvement has been largely the result of the accomplishments made under the national grade crossing improvement program funded under Section 203 of the 1973 Highway Act and administered by the Federal Highway Administration. The railroad strongly support and have taken an active role in this program. The industry has fostered over 180 meetings between state, local and federal highway and railroad officials in order to expedite and implement this program. This safety effort has been one of cooperation between many disciplines. It is a well defined program with the specific goal of improving safety at the crossing.

The national highway rail/grade crossing safety improvement program has been proclaimed by many to be the most effective highway safety improvement program on record. We are proud to be an integral part of it.

In addition, the public program involving education, enforcement, and engineering conducted through "Operation Lifesaver" is supplementary to and compounds the benefits of the federally sponsored rail-highway grade crossing improvement program. Funded largely by the railroads, this program takes advantage of one of the most effective tools available for reducing accidents—public education. Administered nationally by the National Safety Council and staffed by a full time coordinator, this program is now active in 40 states.

The dramatic improvement in railroad safety is not a fortuitous phenomenon. The railroads have concentrated on programs which result in safer railroads from the ground up. The significant improvement in railroad physical plant since 1975 is reflected in the record expenditures for capital improvements and maintenance. Class I railroads alone committed almost $14 billion in 1982 for capital improvements and maintenance. This follows six years of record spending for capital improvements. Some $5 billion of the 1982 funding went directly for maintenance of way and struc-

tures while $6 billion was spent for maintenance of equipment. Over the past seven years, the industry's rail and tie programs have been at the highest levels in 20 years despite the reductions in the miles of road operated in freight service.

Improvements in safety have also resulted from increased spending by individual railroads on safety and training programs for employees, a step-up in railroad safety research programs and increased cooperation among railroads, shippers, rail unions and the federal government.

Despite the dramatic decline in injuries described previously, the industry is devoting significant resources to the reduction of these injuries. Over the period 1975–1982 five causes of railroad employee injuries represented about 56 percent of the injuries. These causes were (1) stumbling, slipping, and falling (26 percent); (2) use of tools (10 percent); (3) handling materials (9 percent); (4) handling ties (5 percent); and (5) striking or being struck by equipment or material (5 percent).

The most frequently involved crafts are trackmen (20 percent), road trainmen (17 percent), yardmen (19 percent), and carmen (7 percent).

Sprains and strains from over-exertion are the predominant type of injury from all causes to all crafts—accounting for over 50 percent of the cases. Back strains and other back injuries account for 27 percent of all injuries. Sprains of the leg or foot account for 12 percent with other injuries from over-exertion accounting for about 11 percent.

Programs of research are underway at the AAR and on individual railroads to identify means to reduce the level of physical stress in railroad jobs. The latest techniques in job analysis and biomechanics are being used to identify hazardous tasks and to evaluate the physical requirements and demands of the jobs. The tools, methods, postures, and operating practices in use are also being evaluated. Two Class I railroads have already begun to apply these research techniques to identify and reduce hazards leading to injuries from physical stress.

I have attached to my statement an Appendix which contains a complete breakdown of rail safety statistics for recent years and accompanying analyses.

FRA'S SAFETY PROGRAM

The Committee has asked witnesses to comment on the effectiveness of the FRA's safety program. Within the past several years the FRA has taken positive steps to amend its regulations to eliminate some of the more onerous and demonstrably unproductive requirements previously imposed by the regulations. For example, the locomotive inspection standards and the freight car standards were substantially revised. Those revisions, which adjust the intervals between required inspections in line with contemporary needs, relieved the railroads of significant economic burdens. These changes had no adverse effect on safety.

More recently, effective October 1, 1982, the FRA took an encouraging first step in rationalizing the power brake regulations. Those amendments were fully supported by an administrative record, which included the results of actual tests performed by individual railroads. Significantly, the safety record shows that those amendments have not had an adverse effect on safety. Accidents attributable to brakes on rail rolling stock dropped from 113 in 1982 to 68 in 1983;[1] and this was with higher traffic levels, the first full year in which the rule changes were in effect. Importantly, the reported accidents cannot be attributed to the specific changes in the power brake regulations.

Similarly, in 1982 the FRA amended the track safety standards to enhance safety and to shed the old standards of some of the counterproductive requirements unrelated to safety. These changes did not adversely affect railroad safety. The total reported number of accidents attributable to track related causes have declined each year since 1978 and the decline continued in 1983. Compared with 1982 there were 11.5 percent fewer track related accidents in 1983.

Earlier this year the FRA issued amended regulations governing the railroad signal systems. These changes will eliminate some of the unnecessary regulatory burden from railroads without compromising safety. These changes will permit railroads to redirect the expenditure of valuable resources to more productive uses.

These examples of FRA's willingness to reexamine its regulations are merely the first steps in what we hope is a continuing effort to rationalize the railroad safety regulations. Changes should be made in each instance in which the regulations impose regulatory and economic burdens with no compensating safety benefits. We ask that Congress encourage the FRA to weigh the cost of its regulations and elimi-

[1] FRA estimates based on 11 months of data.

nate them or develop altenatives when that can be acomplished in a manner consistent with established safety objectives.

Certainly the joint research projects in which FRA has participated have contributed a great deal to the capability of the railroad industry to improve safety.

For example, among the most important programs in the field of safety is Track-Train Dynamics. This program began in 1972 and is supported by the FRA, individual railroads, the railroad supply industry, the Transportation Development Agency of Canada and the Association of American Railroads. Through this program, there has been developed a set of guidelines for train handling that describe to a locomotive engineer the optimum manner of maintaining his train in a stable, dynamic condition over a wide variety of terrain, climatic, and consist conditions. These guidelines have been widely distributed throughout the railroad industry and constitute a new basis for revision of individual railroads' train handling guidelines. They have been very extensively adopted and utilized and have eliminated a large number of heretofore unexplained derailments.

In the Track-Train Dynamics program a large number of dynamic, analytical models have been developed. These models have established the dynamic response of cars and equipment. They have been used to assess probable behavior of new equipment. They have been used to analyze derailments and have taken out of contention some views as to what might have caused the derailment. They have been used to determine train handling practices and to refine them. They have been used to establish guidelines for train maintenance by making possible studies in ranges where operations are not feasible because of potential risk of accident. In short, these analytical models have had wide application and continue to be important in defining the basis for improved practices within the industry. This program has provided the FRA and the railroad industry with deep insight into opportunities for improvement and has provided specific means of translating those findings into action.

Another product of this program is a manual for conducting derailment investigations. Because it is essential to determine accurate causes in order to prevent future derailments, the manual stresses the methods and logic of sound investigation. There are major sections in the manual dealing with accidents caused by equipment, track, human factors, and track-train dynamics.

The AAR research program includes continuing assessment of the causes of accidents. Research is in progress on all components that fail in service. Results of this research are used to improve specifications or inspection and test methods so as to reduce accident frequency.

Next month the AAR will announce a major new program to develop High Productivity Integral Trains capable of providing rail transportation of bulk commodities or intermodal transportation of general freight with much higher productivity than can be achieved with existing equipment. These new trains will be designed for increased energy efficiency resulting from reduced tare weight and improved aerodynamics. Improved track-train-dynamics will contribute not only to the reduction in structural requirements and weight, but also to safety. The railroads' freedom to respond to the forces of the market place should lead, through this program, to the development of new equipment capable of providing dedicated train service with even greater reliability, efficiency, and safety.

In addition, the FRA is participating in other cooperative programs on track and equipment which will lead to significant improvements in safety. An excellent example is the jointly-funded research on wheel failures. Current FRA regulations require that wheels exhibiting "reddish-brown discoloration" be removed from service. The basis for this regulation is the assumption that such discoloration is an indication of thermal damage that a wheel may have suffered due to prolonged brake applications. Research to date indicates that about 75 percent of the wheels removed under this regulation are not thremally damaged. Furthermore, this research has shown that over 80 percent of thermally damaged wheels in the car fleet are probably not discolored. Thus, the industry finds that it must discard wheels that are not defective, at a cost of approximately $100 million per year, and that it has no method for isolating a much larger population of damaged wheels which are not discolored. In response to this problem, the FRA and the AAR are funding researh to find more effective methods to identify thermally damaged wheels.

FRA currently has a modest research program covering hazardous material transportation in tank cars. We believe this effort is a good one and is sufficient at the present time. The major problems of hazardous materials release in accidents involved the catastrophic releases of such products as propane, vinyl chloride, ammonia and ethylene oxide. Research by the RPI-AAR Cooperative Research Program and FRA established effective solutions to the problems. Retrofit on the most affect-

ed cars has been completed and other changes are in progress. Now only lesser issues arise. For example, although chlorine cars have behaved exceptionally well in accidents, industry has proposed an improved insulation system to better protect them in fires. FRA will provide major funding for fire tests to validate this improvement. FRA also is planning tests to assess the puncture resistance of chlorine cars. Industry will cooperate in this effort. Another area being studied by both FRA and industry involves the issue of the safe movement of cars damaged in accidents.

INDUSTRY CONCERNS WITH HAZARDOUS MATERIALS TRANSPORTATION

As indicated previously, industry itself has played a major role toward improving tank car safety. Many research projects have been carried out on a cooperative basis with FRA; and, under the AAR Tank Car Committee and the RPI-AAR Tank Car Safety Project, industry has conducted many of its own studies. Industry research continues. Every major accident involving tank cars is reviewed to determine whether an improvement is indicated in the specifications for design, fabrication, repair or operating procedures. The reduction of product loss through redesign of bottom outlets to prevent their being sheared off in derailments is an example of a program initiated and carried out by industry. Industry has a self-policing policy. It is efficient since the means exist through the several AAR Mechanical Division Committees to promptly identify problem areas and quickly implement remedial measures.

A cooperative effort between shippers, railroads, and tank car builders, which began in the late 1970's, has not evolved to a permanent inter-industry task force to suggest further improvements in the safe transportation of hazardous materials and the handling of spills. The Association of American Railroads (AAR), the Chemical Manufacturers Association (CMA), and the Railway Progress Institute (RPI) began work in June 1982 to advance the knowledge and safe practices associated with hazardous materials.

This new inter-industry initiative is designed to consolidate and advance prior accomplishments and to address additional issues that will lead to safe transportation of hazardous materials. Three major areas of study have been identified:

Accident and Release Prevention;
Accident and Relase Response;
Information Programs.

Accident and release prevention projects the task force is sponsoring include an analysis of non-accident releases to identify areas where action can be taken to prevent leaks and splashes of materials from tank cars. Development of a pre-trip car inspection program for shippers is also underway. Data on accidents involving releases of hazardous materials are being compiled to pinpoint areas for further improvement in containers and handling procedures. Projects are also underway to review emergency information needs. Possible improvements to the very successful CHEMTREC program are being considered along with other information sources such as the Hazardous Materials Information System developed by the AAR.

Accident notification and response procedures are being analyzed for ways to improve the overall response performance. Incident reporting and communication networks are being reevaluated for possible improvements. Better, faster, and more uniform response actions and safety measures are being addressed by the task force along with the potential for more special-product mutual help teams like the CHLOREP team sponsored by the Chlorine Institute.

The task force plans to participate in and encourage the development and use of safe cost-effective transportation, packaging, and distribution methods, equipment, facilities, and practices, and improved communication between the industrial and public sectors. The task force is also encouraging strong industry participation in regularly-scheduled hazardous materials spills conferences.

An effort in the area of public emergency preparedness is also underway. A community contingency planning package is being considered for development. This would include training workshops and a performance evaluation procedure. Measures to deal with sabotage and terrorism are also being considered since some incidents have occurred as a result of these dreadful tactics.

Such efforts clearly demonstrate that the rail transportation, chemical, and railway supply industries are committed to the objective of making hazardous materials transportation even safer than it is today, and to promote safer and more effective response capabilities.

FEDERAL FUNDING OF STATE PARTICIPATION PROGRAMS

The railroads' primary concern with respect to the State inspection programs is that the Federal safety standards and regulations be administered in a uniform manner by trained and capable people. The railroads have stressed the importance of having highly qualified State inspectors. At a minimum, the State inspectors should be fully competent to measure conditions and practices observed on the railroad against applicable Federal requirements and should be capable of understanding the safety consequences of conditions and practices observed. In our view this requires that the State inspectors meet at least the same standards in terms of field experience as is demanded of Federal inspectors.

If any reduction or cessation of Federal support for the State programs occurs, it is essential that the required qualifications for the State inspector not be relaxed.

Even though Federal funding is discontinued, the existing regulations governing State participation should remain in place. This is essential to achieve uniformity in the administration of the rail safety regulations.

TRANSPORTATION TEST CENTER

On October 1, 1982, management responsibility for the Transportation Test Center at Pueblo, Colorado, was transferred from the FRA to the AAR. This shift in both the management and the mission of TTC was pending when I testified on the Federal Railroad Safety Act in the spring of 1982. At the time, the FRA had indicated that it would be without operating funds to keep TTC open after September 30 of that year although it could continue to perform railroad safety-related projects and tests at TTC.

The AAR agreed to undertake the management of TTC on the condition that the FRA would continue to be a substantial user of the facility. While we in the railroad industry had concluded at the time that we needed TTC both for safety-related research and for work designed to improve the efficiency of the industry, we were not in position to provide all of the funds necessary for this extensive facility. Since it was also in FRA's best interest to keep this facility operational, much of FRA's safety research could be performed efficiently under contract at the Test Center.

The 16 months since have demonstrated the effectiveness of what is essentially a private-sector operation of TTC with Government, principally in the form of the FRA and UMTA, as TTC's prime customers.

The facility is being better utilized. The "customer base" of TTC is expanding. Private industries that did not know of TTC, or that did not relate TTC's capabilities to their needs, are coming to TTC in increasing numbers. Tests of a proprietary nature that would have been unlikely had TTC remained as a Government-operated facility are becoming commonplace. While the Government operated TTC, its budget for work at the facility ranged from $16 million to $22 million per year. FRA is now funding TTC at a rate of $7 million to $8 million per year and receiving about the same volume of results.

There is a strong relationship to rail safety in most of the work that TTC performs. Current and future Government-sponsored safety research requires just such a facility subject to careful control, and free of the interruptions and conflicts inherent in using commercial railroads as test sites. TTC's current primary project, an independent test railroad on which heavy traffic and high tonnage are possible under carefully controlled conditions, is designed to permit Government and the railroads to learn about the deterioration of track and equipment components under heavy traffic.

Other Government-sponsored safety research at the Test Center includes the analysis of wheel failures mentioned previously; development of design criteria to resolve failures of hollow axles on certain commuter cars; and examination of why railroad track sometimes buckles as temperature rises, and how to forestall such events.

We at the AAR are eminently satisfied with the arrangement by which the Test Center has been permitted to continue its research into rail safety and related issues. We expect to continue and to expand our role in this mutual endeavor. The time is not yet in sight, however, when TTC can function without substantial FRA and UMTA funding commitments.

We are pleased also that Mr. John Riley, FRA Administrator, has indicated that an emphasis of his agency will be on investments in safety research, and that he believes, as he said in Pueblo on February 24, that "the Test Center will continue to be the primary competitor for our safety dollars."

PROPOSED LEGISLATION

The Railway Labor Executives Association has submitted several specific legislative proposals to Congress. These proposals should be rejected. While I will address each proposal specifically, I would like to make several observations. The proposals advanced by the RLEA are either issues which have been the subject of labor/management negotiations or which are matters that the FRA has already addressed and has disposed of on the basis of complete administrative records.

The United States Congress is not the proper forum for dealing with labor/management issues. The identity of the specific unions assigned to do particular tasks is a matter which should be left to the negotiating table, not an issue for Congress to decide. Similarly, the provision of sleeping quarters has traditionally been a matter for collective bargaining.

On too many occasions Congress has been requested to override the Federal Railroad Administration and enact detailed legislation requiring specific regulatory responses on matters which were already within the authority of FRA under the Federal Railroad Safety Act of 1970. A 1978 report published by the United States Congress' Office of Technology Assessment was critical of Congressional action requiring or prohibiting specific actions in response to perceived hazards in the railroad industry. The report concluded:

> "That response has been typically made without adequate consideration of alternative responses such as cooperative programs, collective bargaining and arbitration procedures, and adoption of incentive programs."

The report identified examples of such actions contained in the Federal Railroad Safety Authorization Act of 1976 in which Congress adopted specific provisions regarding the location of crews quarters and the requirement for end of train markers. The OTA report concluded that:

> "In each case, a solution to a hazard was mandated by law. The law required further detailed regulation in advance of consideration of alternative courses of action, or a clear understanding of the extent of the hazard and its significance relative to other hazards. In making this response without full consideration of alternative approaches, unnecessary inflexibility and inefficiency are built into the overall safety program and emphasize (sic) an adversarial rather than cooperative approach to safety."

Congressionally mandated safety measures preclude innovation, stifle product development and unreasonably burden the railroads without full assessment of the benefit of alternatives.

Sleeping facilities

In 1976 Congress amended the Hours of Service Act to make it unlawful for a railroad to construct or begin to construct sleeping quarters for employees on or after July 8, 1976, within or in the immediate vicinity of any area where railroad switching or humping operations are performed. Under that provision FRA has defined "immediate vicinity" as being within one/half mile of the switching or humping operations and its rules require that permission must be obtained before sleeping quarters can be constructed, reconstructed, or rehabilitated within that one/half mile zone. For dormitories to be located within a one/third mile zone, barriers must exist and certain topographical criteria must be met.

RLEA now requests the elimination of the January 8, 1976, date for "grandfathering" crews quarters built prior to that date. While RLEA's proposal is not clear, it appears that railroads would be required to file applications for approval to continue the use of older dormitories located in the one-half mile zone, and to make substantial construction or topographical modifications in order to qualify those dormitories located within the one-third mile zone. Another alternative, the one which rail labor prefers, would be the dismantling of the railroad owned sleeping facilities and arrangements for the use of local hotels or motels.

It is estimated that there are over 100 railroad-provided sleeping quarters located within the one-half mile zone. Some of these are operated by the YMCA for the railroads. If the FRA would not grant approval for the continued use of the older facilities, the cost to railroads of relocation would be substantial.

In many locations throughout the country town centers are located within one-half mile of railroad yards. In is not unusual for motels, hotels, and employee private residences to be located within one-third of a mile of switching and humping operations.

There is no compelling need for subjecting the pre-July 8, 1976, sleeping facilities to substantial modification or relocation. It would be unreasonable to require the expenditure of valuable resources to purchase land and build new facilities. It would

be ironic to require that railroad employee sleeping quarters be removed to the far side of the local hotel.

Performance of airbrake tests

Congress is currently being requested to override provisions in existing collectively bargained agreements by specifically designating the particular railroad union members which are to perform certain airbrake tests.

The regulations governing the test and inspection of airbrakes as administered by the FRA have always required that initial terminal road train airbrake tests be performed by "qualified persons." In an agreement reached between rail labor and management and accepted by the FRA the regulation were amended to state that "Where a carman is to perform the inspection and test under existing or future collective bargaining agreements, in those circumstances a carman alone will be considered a qualified person." Having agreed that collectively bargained agreements will govern the question of whether the tests and inspections will be performed by carmen, the RLEA is now asking Congress to intercede, and by legislation overturn the regulation adopted by FRA.

This request has nothing to do with safety but is a straight forward unadorned demand for a Congressionally mandated work assignment. For years railroads all across the country have assigned the task of performing initial terminal road train airbrake tests and inspections to employees other than those from the carmen's union under certain conditions. Trainmen are qualified to perform these tests and inspections at many locations. Under the terms of a National Agreement reached in 1964 and amended in 1975, it is not necessary to employ carmen at a facility if there is not a sufficient amount of work to justify employing a carman. The terms of that agreement provide for the handling of any disagreement between management and labor over the question of whether or not there is sufficient work to justify employing a carman. At the request of the General Chairman of Carmen a joint check of the available work can be made. If this does not result in an agreement the matter can be adjudicated under the greivance procedures established under the Railway Labor Act. I will make available to the Committee a copy of the relevant provisions of the 1964 and the 1975 agreements.

Trainmen perform the tests and inspections outside of terminals and inside terminals where carmen are not employed for that purpose. That has been the case since long before the Congress adopted the industry's power brake maintenance standards as federal regulations in 1958.

Railroads are aware of the necessity of performing thorough initial terminal road train airbrake tests and inspections and intermediate inspections. These tests and inspections are being performed in accordance with the spirit and letter of the federal regulations. Congress should not overtrun existing federal regulations in this area or the collectively bargained labor agreements.

USE OF METAL HOOKS TO OPEN RAIL FREIGHT CAR COUPLER KNUCKLES

Having failed in attempts before the Federal Railroad Administration and courts, the rail unions are asking Congress to intercede and declare illegal the use of a simple, timesaving device which actually contributes to safer railroad operations.

The device is a metal hook which permits an employee to stand outside of the lateral profile of a railroad car and reach toward the center of the end of a car with the hook to ensure that the knuckle of the coupler is open. This procedure takes place at the top of a "hump" in a railroad classification yard and substantially reduces the possibility of a failure to obtain automatic coupling on impact on the individual classification tracks. Significantly, when cars fail to couple, because knuckles are not open or because draw bars are misaligned, it is necessary that a switch engine separate the cars on the classification track and that a yard employee open or manually realign the coupler knuckles. This is not only expensive and time consuming, but it occurs in the most congested part of the yard.

This explanation underscores the wisdom of Congress in delegating to the Federal Railroad Administration the authority and responsibility of sorting out the facts and reaching an intelligent decision based on operating and safety needs. That was done in the matter of the metal hooks. After thorough investigation the FRA found that the hook procedure does not violate Section 2 of the Safety Appliance Act, does not create an undue hazard to employees and, indeed, may contribute to employee safety. FRA's decision was subjected to an exhaustive examination by the United States Court of Appeals for the District of Columbia Circuit (*United Transportation Union* v. *Lewis*, Fed. 2d , D.C. Cir. 1983), and was upheld by that court.

The manner in which the union would seek to overturn the metal hook decision would, if enacted, halt railroad year operations. They request that it be illegal for

any employee to place any part of his or her body between cars during coupling or uncoupling operations. As previously stated, perfectly operable, non-defective couplers will on occassion not couple on impact. Physical adjustment is required. This occasional adjustment requires that an employee step between the ends of cars. A coupling system that does not need physical adjustment under certain circumstances has not been invented yet. Furthermore, a part of the coupling procedure involves the coupling of the air hoses which permits the automatic braking which is also required by the Safety Applicance Act. the coupling of air hoses cannot be accomplished unless a person steps between the ends of cars.

Congress should not outlaw a procedure which the FRA has determined may have a positive safety benefit.

Maintenance of grade crossing signals

A proposal has been made to require that the Federal Railroad Administration adopt regulations and standards governing the maintenance, inspection and testing of signal systems and devices at railroad-highway grade crossings. Adoption of such regulations and standards would not improve grade crossing safety. Such regulations and standards would not improve the operability of active grade crossing warning systems.

As previously noted, grade crossing accidents and fatalities are being reduced by the installation of additional active warning devices and by public education programs.

In 1976 the Federal Railroad Administration published an Advance Notice of Proposed Rulemaking inviting public participation in the study of the need for federal regulation governing the maintenance and testing of highway grade crossing protective devices. Indeed, one of the factors which influenced the initiation of that study was a joint proposal for such regulations formulated by the Brotherhood of Railroad Signalmen and the Communication and Signal Division of the AAR. After thorough review of the matter and after consideration of all available data, the FRA concluded that the issuance of regulations requiring standards for the maintenance, inspection and testing of highway grade crossing warning devices could not be justified. Based on the data available from the years 1975 and 1976 FRA found that if all accidents caused by equipment failures were eliminated by adoption of maintenance and testing standards, the total number of accidents would have been reduced by less than three-tenths of one percent in 1975 and less than four-tenths of one percent in 1976. On the basis of that conclusion the FRA terminated the proceeding on September 29, 1978. Since 1976 the number of grade crossings protected by active warning devices has increased yet the number of accidents in which there were a reported failure of warning devices has decreased.

The most significant change since 1978 has been the dramatic decline in the number of accidents, injuries and fatalities involving motor vehicles at public grade crossings. Compared with 1978, there were 47 percent fewer accidents, 43 percent fewer injuries and 48 percent fewer fatalities in 1983.

Standing of collective bargaining representatives

A proposal has been made to authorize the collective bargaining representative to bring enforcement actions in U.S. district courts for violations of any of FRA's safety regulations where the Secretary of Transportation has not taken affirmative enforcement action. At the present time, only the Secretary (and in certain circumstances State agencies) can apply to the district courts for enforcement of the rules, regulations, orders, or standards prescribed under the Federal Railroad Safety Act.

In 1980 FRSA was amended to permit an employee or an authorized collective bargaining representative to seek judicial review of the failure of the Secretary to issue an emergency order under section 203(a). Thus, the railroad employee is not without access to the courts when such employee may be exposed to physical injuries in the course of his employment because of the Secretary's failure, without reasonable basis, to issue an emergency order.

The proposed amendment would create a new enforcement mechanism for alleged violation of the regulation with no guidelines or criteria to guide such enforcement. Presumably then, railway labor could bring an enforcement action even in cases in which the Secretary has affirmatively determined that no FRSA violation has occurred or that an enforcement action in the circumstances is unwarranted. No citizen has standing to challenge law enforcement policies of a public agency no matter how interested the citizen may be in those policies. A local district attorney may exercise his prosecutional discretion and that discretion cannot be challenged by one who is neither prosecuted or threatened with prosecution. The same principle must apply to the enforcement policies of the Secretary in the enforcement of the railroad safety regulation. Moreover, there is nothing in the proposed amendment to assure

that the Secretary is accorded sufficient time to assess the merits of an alleged violation. As a result of these shortcomings, a new enforcement "agency" would be created totally without any direction or oversight from the FRA.

The existence of multiple enforcement agencies opens the way for dozens of interpretations of railroad safety rules, regulations, and standards; perhaps one interpretation for each collective bargaining representative. It would be impossible safely to operate a railroad system on the basis of multiple enforcement policies and rules interpretations. The same is true of operating rules. It is absolutely essential to safe railroad operations that operating rules be unambiguous and that there be no misunderstanding of them by employees and their supervisors. The rules must apply uniformly regardless of who might be the collective bargaining representative of the employees operating under them. There can be no more unsafe arrangement than to introduce uncertainty into the interpretation of operating rules and the enforcement of the safety standards governing them. The proposal makes that situation possible, even probable.

Uniformity of regulation is at least as important to safety today as it was in 1970 when the FRSA was passed. For the sake of safety, the exclusive allocation of rail safety enforcement responsibilities to the Secretary of Transportation and the States should not be disturbed so as in any way to diminish that essential uniformity.

Authorizing collective bargaining representatives to bring enforcement actions would have the further effect of inviting railway labor to initiate harassment litigation. Labor representatives could bring actions to enforce frivilous, non-safety related violations as a means of pressing its position in labor disputes. This form of harassment woulld weaken the effectiveness of the procedures existing under the Railway Labor Act, and not insignificantly, it would further burden the already crowded calendar of the federal courts.

Employee complaints

Rail labor has proposed that Section 212 of the Federal Railroad Safety Act be amended to confer jurisdiction over all disputes araising under that section upon the federal district courts. If adopted such a provision would severely disrupt the long-standing system of referring "minor" disputes or grievances to the Adjustment Boards established pursuant to Section 3 of the Railway Labor Act. Disputes relating to discharge and discipline are traditionally minor disputes handled by Adjustment Boards. In enacting Section 212 in 1980 Congress wisely settled on the Railway Labor Act procedures as the exclusive means for enforcing this section. Requests to carry this issue beyond the Railway Labor Act procedures should be rejected.

Similarly, Congress should reject the proposal to expand Section 212 by authorizing the award of "punitive damages" to the employee that prevails before an Adjustment Board. Such a provision would be totally unjust. Punitive damages have traditionally not been awarded by adjustment boards, and the system has functioned fairly and effectively for decades. There is no reason to treat claims of harassment differently than other claims, and no reason to believe that the remedy afforded us in the 1980 legislation has not been fully adequate.

In 1980 Congress expressed its intent to extend to railroad employees the same protection given employees in other industries under the Occupational Safety and Health Act of 1970. That has been accomplished. Under OSHA the relief available to an employee which has been wrongfully discharged for so-called "whistle-blowing" activities, is limited to rehiring or reinstatement and back pay (29 U.S.C.A. § 660(c)(2). Similarly, the protection afforded motor carrier employees does not include "punitive damages" as part of the relief available under 49 U.S.C.A. § 2305(c)(2)(B).

In 1978 the Office of Technology Assessment concluded that "The existing Federal safety laws, taken as a whole, provide sufficient statutory authority to deal with the existing hazards of railroad operations." The pending proposals do not identify existing conditions which would alter that conclusion. No compelling arguments have been offered to justify Congressional action. Indeed, the facts before the Congress show that the safety record of the railroad industry is improving. There are areas which can be improved and we are working to improve them. But we are not faced with problems that can be addressed by additional legislation.

APPENDIX

ANALYSIS OF SAFETY DATA

All railroads are required to report certain classes of accidents and employee casualties to the Federal Railroad Administration. The Research and Test Department

of the AAR maintains continuing surveillance of these data and conducts analyses to monitor the trends and to identify and rank the causes of accidents, and employee injuries, and fatalities.

The FRA categorizes accidents into four groups for reporting purposes: train accidents, train incidents, nontrain incidents, and grade crossing accidents. Train incidents refer to occurrences in which there was relatively little financial loss but which resulted in death or injury. Non-train incidents are injuries or deaths not involving the movement of trains. An accident is classified a train accident if it involves at least $4,500 damage to railroad property whether or not it involved any casualties. In January 1975, the FRA reporting requirements for both train accidents and incidents were significantly changed, so most of the earlier data are not comparable with post-1974 data.

While train accidents have resulted in substantial damage to track and equipment, these accidents were responsible for only a small portion of railroad injuries and fatalities. Figure 1 shows the percentage of fatalities and injuries by type of accident for 1978–1982. Grade crossing accidents accounted for the largest percentage of railroad-related fatalities, about 60 percent. Train incidents and nontrain incidents accounted for 38 percent of all railroad fatalities, most of which involved trespassers. Only 2.0 percent of reported fatalities were related to train accidents, and only 1.4 percent of reported injuries occurred as a result of a train accident.

There has been a sharp downward trend in fatalities over the last five years as shown in Table 1. From 1978 through 1982, there has been a decrease of over 500 fatalities. Preliminary data for 1983 show the number of fatalities to be an all-time low.

FIGURE 1

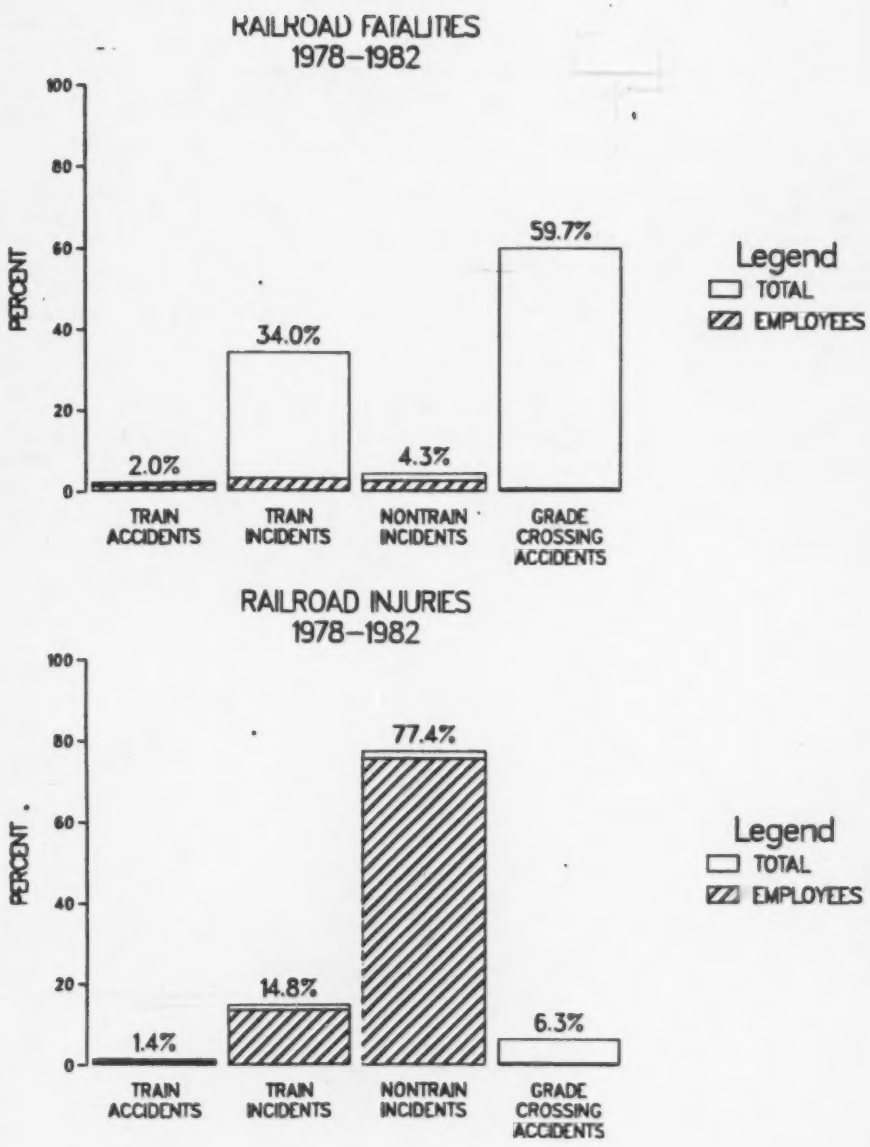

RAILROAD FATALITIES
1978–1982
PERCENT
100
80
60
40
20
0
2.0%
34.0%
4.3%
59.7%
TRAIN ACCIDENTS
TRAIN INCIDENTS
NONTRAIN INCIDENTS
GRADE CROSSING ACCIDENTS
Legend
TOTAL
EMPLOYEES
RAILROAD INJURIES
1978–1982
PERCENT
100
80
60
40
20
0
1.4%
14.8%
77.4%
6.3%
TRAIN ACCIDENTS
TRAIN INCIDENTS
NONTRAIN INCIDENTS
GRADE CROSSING ACCIDENTS
Legend
TOTAL
EMPLOYEES

TABLE 1.—RAILROAD FATALITIES BY TYPE OF PERSON 1978–82

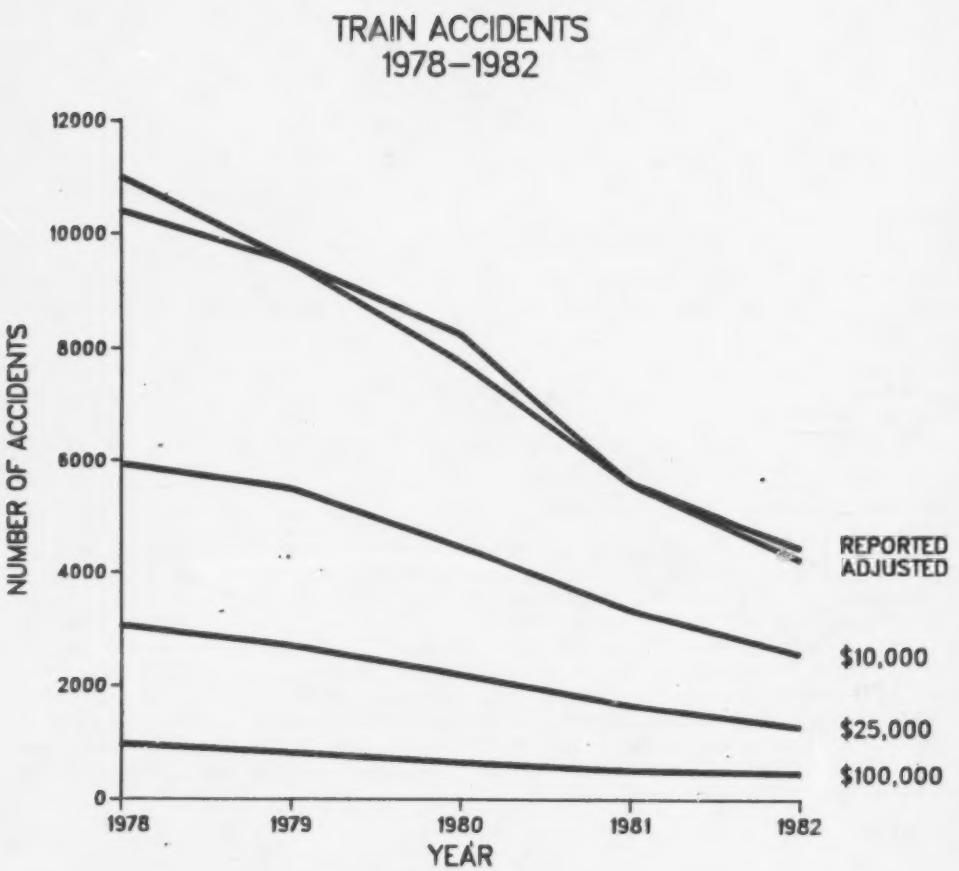
Type of person	1978	1979	1980	1981	1982	Percent of total
Employees	131	102	108	72	84	7.2
Passengers	13	6	4	4	9	0.5
Nontrespassers	1,010	805	739	626	525	53.7
Trespassers	492	516	566	582	501	38.5
Total	1,646	1,429	1,417	1,284	1,119	100.0

RAILROAD FATALITIES BY TYPE OF ACCIDENT 1978–82

Type of accident	1978	1979	1980	1981	1982	Percent of total
Train accidents	61	23	29	13	14	2.0
Train incidents	457	453	496	496	444	34.0
Nontrain incidents	64	70	59	47	54	4.3
Grade crossings	1,064	883	833	728	607	59.7
Total	1,646	1,429	1,417	1,284	1,119	100.0

Figure 2 presents the 1978–82 trends in train accidents at various damage thresholds. The FRA reporting threshold is adjusted bi-annually to remove the effects of inflation. In 1975 and 1976, the threshold was $1,750; in 1977 and 1978, it was $2,300; in 1979 and 1980, it was $2,900; in 1981 and 1982, it was $3,700. In 1983 the threshold was increased to $4,500. The "adjusted" trend line shown in Figure 2 is for yearly adjustments. As can be seen in Figure 2, the number of train accidents at each threshold has declined since 1978. Between 1978 and 1982, the reported number of train accidents decreased 60 percent. The number of accidents at the "adjusted" threshold and at thresholds of $10,000, $25,000, and $100,000 decreased 60, 57, 58, and 53 percent respectively. Preliminary 1983 data show the downward trend in train accidents is continuing.

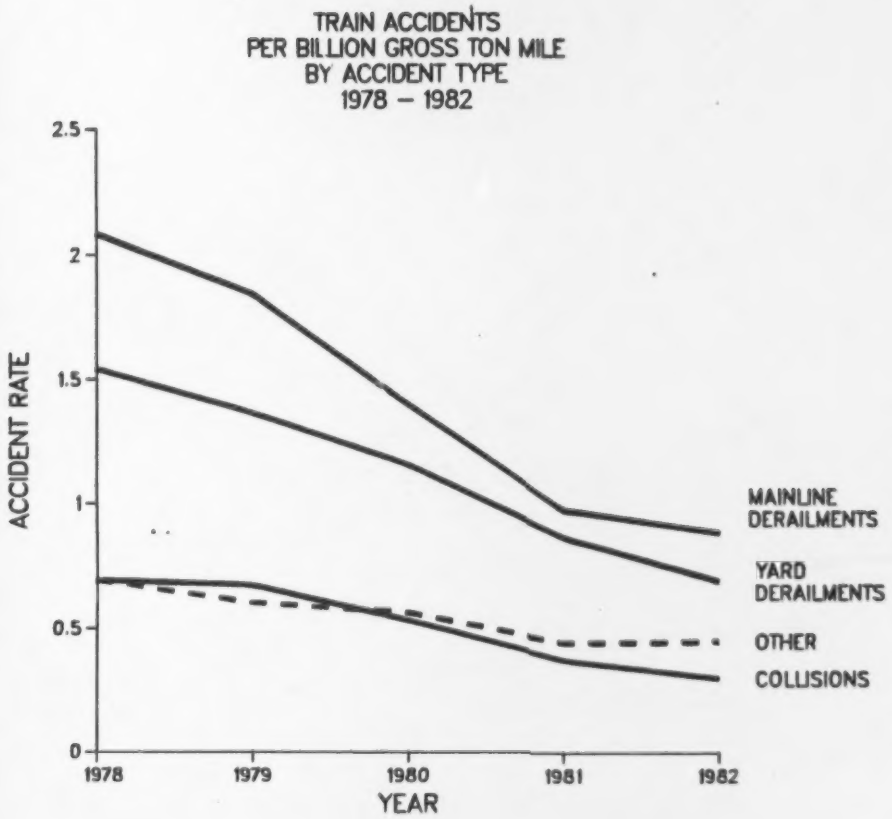
FIGURE 2



These curves also point out that over 40 percent of reported accidents have damages below $10,000; and major accidents, those in which damage to track and equipment was greater than $100,000, accounted for only 8.6 percent of train accidents over the last five years.

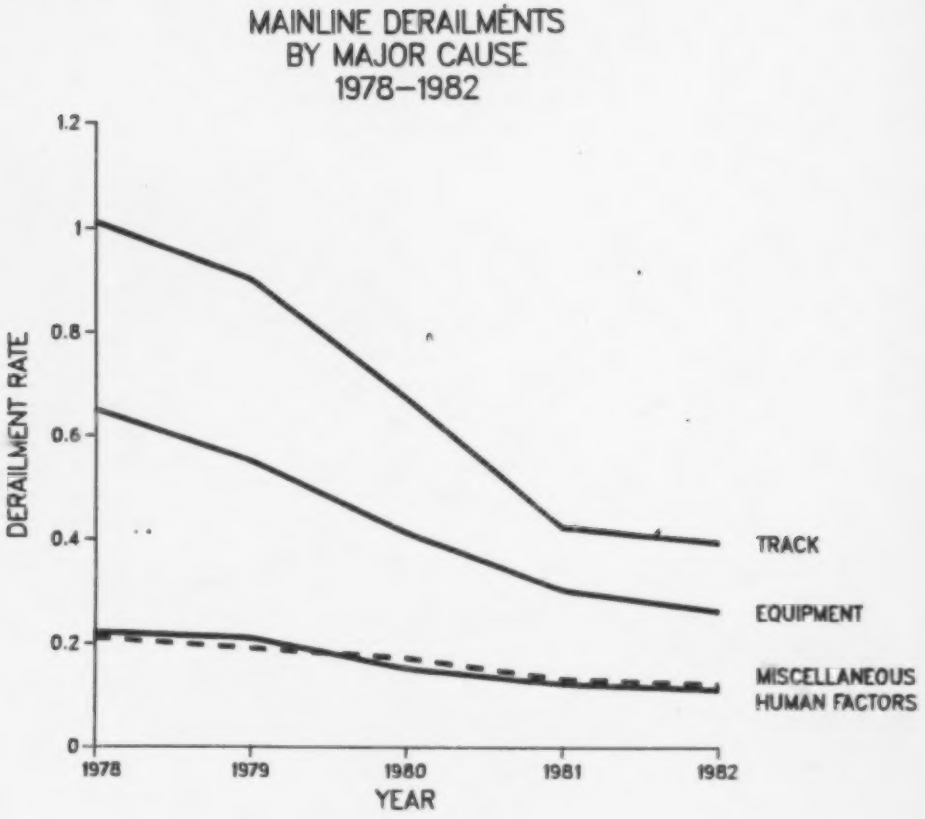
Figure 3 shows the 1978–1982 trends in mainline derailments, yard derailments, collisions, and other accident types normalized by gross ton miles. The largest decrease was in the mainline derailment rate which declined by 58 percent since 1978. The yard derailment rate decreased by 55 percent, collisions by 46 percent, and all other accidents by 34 percent. In terms of the percentage distribution by accident type, mainline derailments accounted for almost 40 percent of all train accidents. Yard derailments accounted for 31 percent, collisions for 14 percent, and all other accidents for 15 percent.

FIGURE 3



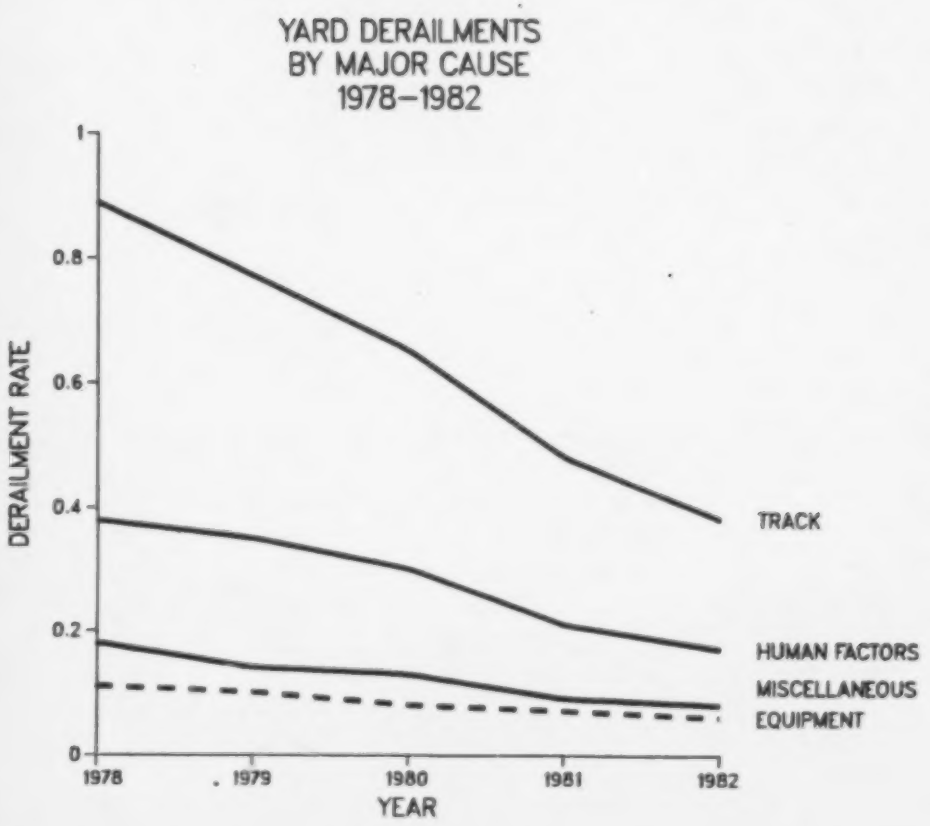
Accident causes are categorized into four groups—Track, Equipment, Human Factors, and Miscellaneous. The 1978–82 trend in each of these cause categories has declined dramatically for both mainline and yard derailments as shown in Figures 4 and 5. Between 1978 and 1982 the Track caused mainline derailment rate decreased 62 percent. The mainline derailment rates for Equipment, Human Factors and Miscellaneous causes decreased 60, 52, and 43 percent respectively over the past five years.

FIGURE 4



The yard derailment rate for Track, Equipment, and Human Factors causes each decreased about 56 percent between 1978 and 1982. The yard derailment rate for Miscellaneous causes decreased 43 percent.

FIGURE 5



The major causes of Track, Equipment, and Human Factors each represent many cause categories. Tables 2 and 3 show the percent of accidents and reported damages associated with these cause categories for mainline and yard derailments. These two tables point out the diversity of causes associated with train accidents, specifically mainline and yard derailments.

TABLE 2.—MAINLINE DERAILMENTS BY CAUSE CATEGORY 1978–82 AVERAGE

Cause category	Derailments	Percentage	Damages, millions	Percentage
Track causes	1,402	47.2	$100.2	43.2
Track geometry	767	25.8	42.6	18.3
Rail and joint bar	412	13.9	41.2	17.7
Frogs and switches	121	4.1	4.3	1.9
Roadbed defects	91	3.1	9.9	4.3
Other track causes	11	0.4	2.2	1.0
Equipment causes	897	30.2	72.0	31.0
Truck components	223	7.5	13.5	5.8
Axles and journals	195	6.6	17.1	7.4
Wheels	176	5.9	20.2	8.8
Body	98	3.3	7.1	3.0
Couplers and draft gear	91	3.1	5.4	2.3
Brakes	86	2.9	6.1	2.6

TABLE 2.—MAINLINE DERAILMENTS BY CAUSE CATEGORY 1978–82 AVERAGE—Continued

Cause category	Derailments	Percentage	Damages, millions	Percentage
Other equipment causes	28	0.9	2.6	1.1
Human factors	335	11.3	26.6	11.5
Miscellaneous H.F	182	6.1	10.3	4.4
Speed	57	1.9	10.1	4.3
Use of switches	36	1.2	1.0	0.4
Use of brakes	34	1.1	2.6	1.1
Other rules	20	0.7	1.1	0.5
Signaling	6	0.2	1.4	0.6
Employee physical condition	1	0.0	0.2	0.0
Miscellaneous	333	11.2	33.3	14.3
Total	2,966	100.0	232.1	100.0

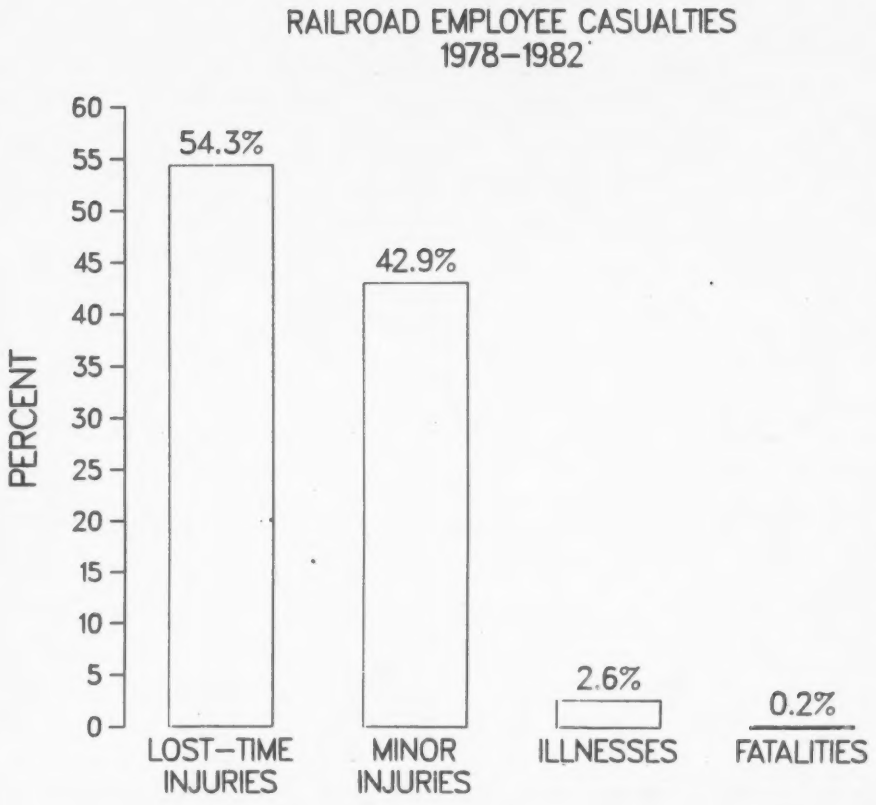
TABLE 3.—YARD DERAILMENTS BY CAUSE CATEGORY 1978–82 AVERAGE

Cause category	Derailments	Percentage	Damages, millions	Percentage
Track causes	1,309	56.5	$17.6	52.7
Track geometry	491	21.2	6.5	19.4
Frogs and switches	427	18.5	5.5	16.4
Rail and joint bar	334	14.4	4.7	14.0
Roadbed defects	49	2.1	0.8	2.3
Other track causes	7	0.3	0.2	0.7
Equipment causes	252	10.9	3.9	11.6
Wheels	80	3.4	1.3	3.7
Truck components	61	2.6	0.9	2.6
Body	39	1.7	0.6	1.7
Brakes	31	1.4	0.4	1.3
Coupler and draft gear	26	1.1	0.5	1.4
Other equipment causes	11	0.5	0.5	0.7
Axles and journals	4	0.2	0.1	0.2
Human factors	584	25.2	9.0	26.9
Miscellaneous H.F	249	10.7	3.7	11.2
Use of switches	263	7.0	2.1	6.4
Other rules	70	3.0	0.9	2.7
Use of brakes	50	2.2	1.1	3.2
Speed	42	1.8	1.0	2.9
Signaling	9	0.4	0.1	0.4
Employee physical condition	1	0.0	0.0	0.0
Miscellaneous	172	7.4	2.9	8.7
Total	2,316	100.0	33.4	100.0

Employee casualties

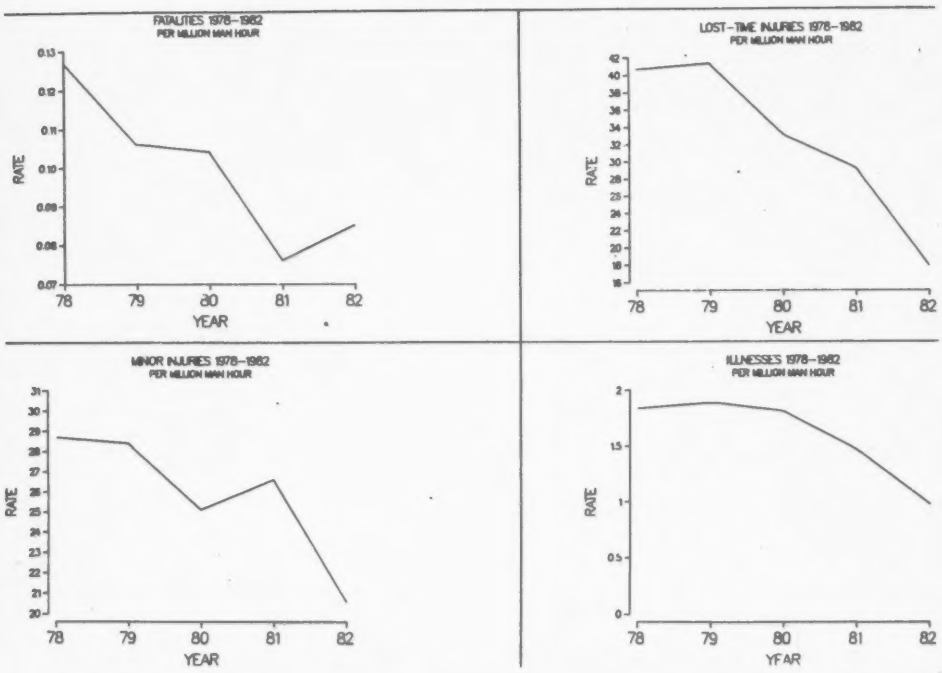
Between 1978 and 1982 an average of almost 62,000 casualties (fatalities, injuries and occupational illnesses) were reported annually. Over 90 percent of these casualties, almost 57,000 a year, involve on-duty railroad employees. Of these, employee casualties, 0.2 percent were fatalities and 2.6 percent were occupational illnesses. Almost 43 percent of the reported casualties were minor injuries—that is they resulted in no lost work days. (Figure 6).

FIGURE 6



The trends in employee casualties per million man hours are shown in Figure 7. The rate of employee fatalities, illnesses, and injuries have each declined since 1978. Employee fatalities per million man hour decreased 32 percent, lost time injuries decreased 60 percent, minor injuries decreased 29 percent, and occupational illnesses decreased 47 percent.

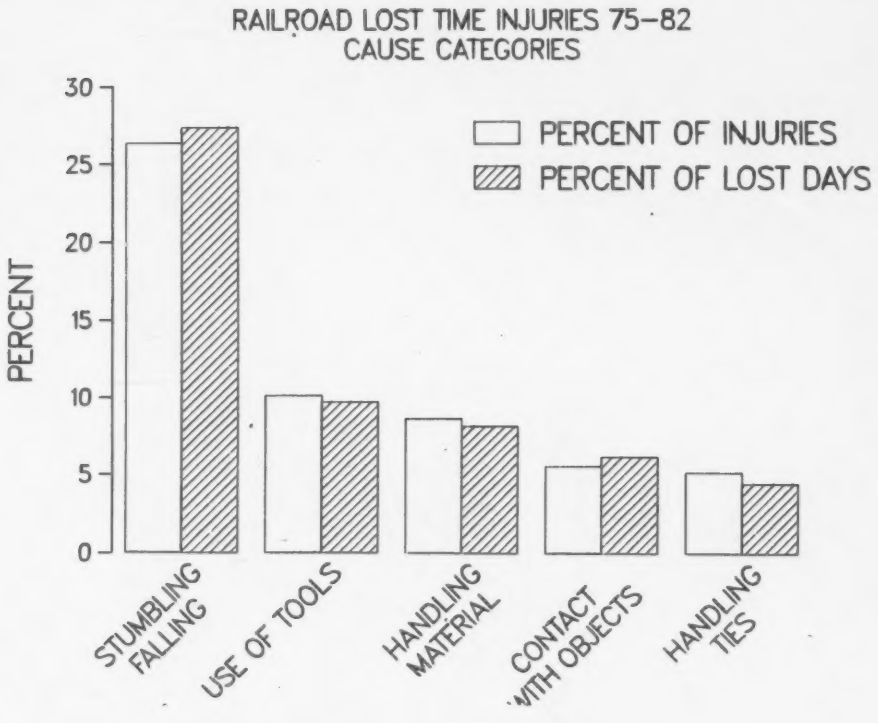
FIGURE 7



The majority of the lost-time injuries are not associated with train accidents as shown in Table 4. Therefore, research on employee safety must consider factors other than the causes of train accidents if they are to have a significant impact on employee injuries. Table 4, which compares the significant cause of employee fatalities and lost-time injuries also points out that the leading causes of lost-time injuries are not the same as the leading causes of employee fatalities. Note that the first two causes listed, which account for over 50 percent of fatalities, account for only 8 percent of lost-time injuries.

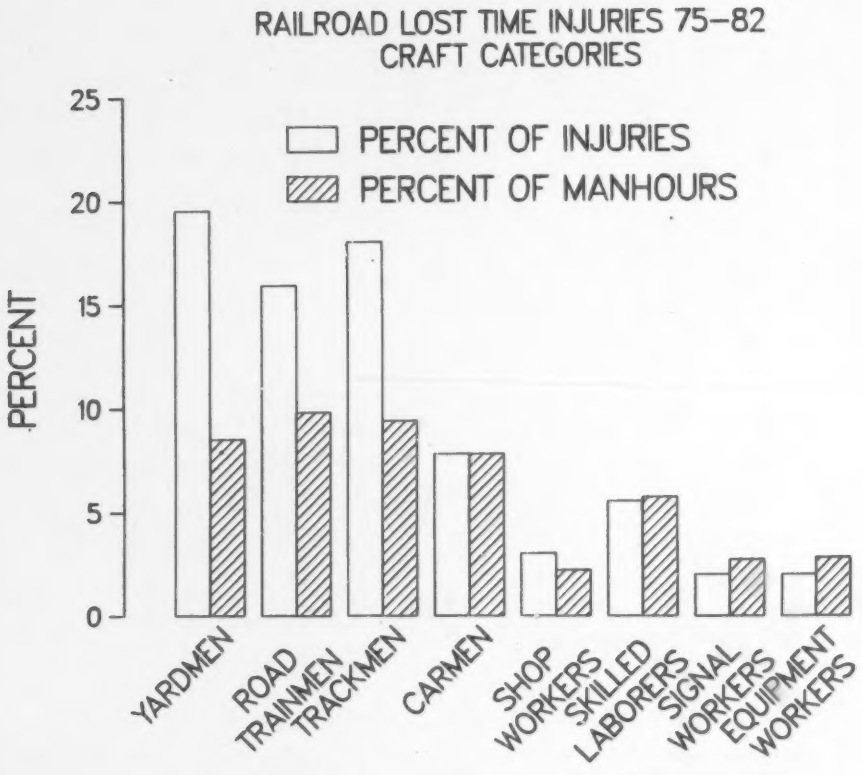
Over the period 1975–1982 five causes of railroad employee injuries represented about 56 percent of the injuries. These causes were 1) stumbling, slipping, and falling (26.3 percent); 2) use of tools (10.1 percent); 3) handling materials (8.6 percent); 4) striking or being struck by equipment or material (5.5 percent); 5) handling ties (5.1 percent) (Figure 8). The remaining 44 percent of injuries were spread over 17 different causes.

FIGURE 8



The most frequently involved crafts are trackmen (20 percent), road trainmen (17 percent), yardmen (19 percent), and carmen (7 percent) (Figure 9).

FIGURE 9



Sprains and strains from over-exertion are the predominant type of injury from all causes to all crafts—accounting for over 50 percent of the cases. Back strains and other back injuries account for 27 percent all injuries. Sprains of the leg or foot account for 12 percent with other injuries from over-exertion accounting for about 11 percent (Figure 10).

FIGURE 10

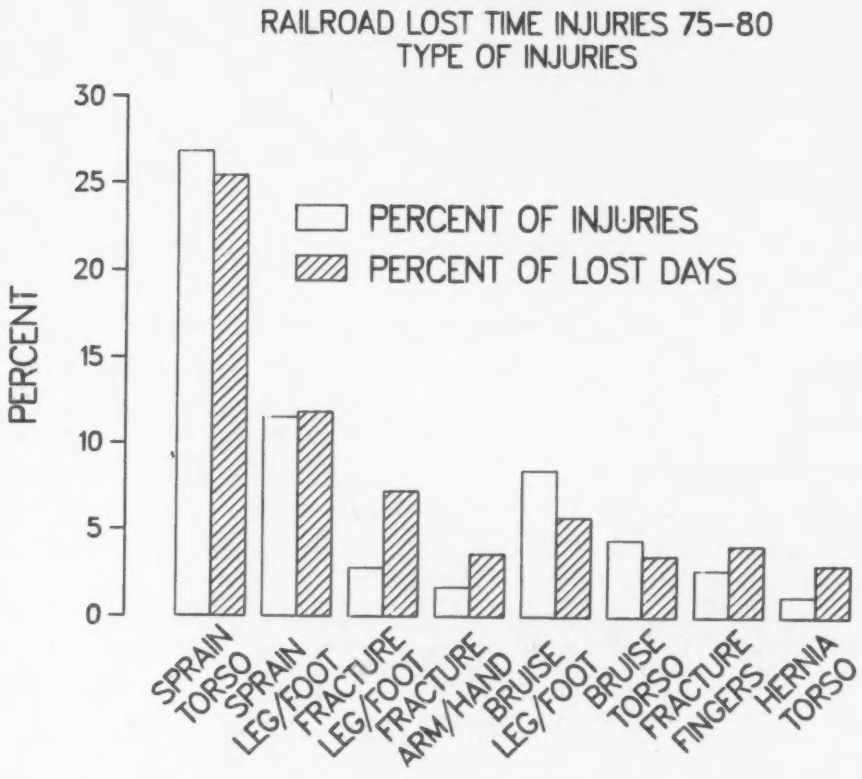


TABLE 4.—EMPLOYEE CASUALTY DATA SUMMARY 1975–1982 CAUSES OF FATALITIES AND LOST-TIME INJURIES

Cause	Fatalities			Injuries		
	Number	Percent	Rank	Number	Percent	Rank
Striking or being struck by equipment or material	205	25.6	1	13,424	5.5	5
Train accident collisions, derailment and grade X-ings	200	25.0	2	5,448	2.2	12
Stumbling, slipping, and falling	78	9.71	3	64,616	26.3	1
All others	73	9.1	4	22,920	9.3	3
Motor vehicle accidents	42	5.3	5	4,096	1.7	15
Coupling/uncoupling locos/cars	40	5.0	6	9,968	4.0	9
Use of tools	39	4.9	7	24,824	10.1	2
Fire, electric shock	25	3.1	8	2,128	.9	21
Assault	25	3.1	9	3,696	1.5	18
Flying or falling object	19	2.4	10	8,032	3.3	11
Getting of/on equipment	14	1.7	11	11,056	4.5	7
Operating handbrakes	8	1.0	12	4,056	1.7	14
Unexpected movement	8	1.0	13	3,088	1.3	19
Caught between cars/locos	6	.75	14	384	.2	22
Defective equipment	5	.6	15	3,720	1.5	17
Slack action	5	.6	16	3,904	1.6	16
Handling material	4	.5	17	21,168	8.6	4
Window/door, etc	2	.25	18	4,816	2.0	13
Corrosives, fumes	1	.1	19	2,344	0.9	20
Handling ties	1	.1	20	12,600	5.1	6

TABLE 4.—EMPLOYEE CASUALTY DATA SUMMARY 1975–1982 CAUSES OF FATALITIES AND LOST-TIME INJURIES—Continued

Cause	Fatalities			Injuries		
	Number	Percent	Rank	Number	Percent	Rank
Operating switches	0	0	21	9,136	3.7	10
Object in eye	0	0.0	22	10,360	4.2	8
Total	800	100.0	.....	245,784	100.0	.....

[The following information was subsequently received for the record:]

QUESTIONS OF THE MAJORITY AND THE ANSWERS THERETO

Question. Do you have any recommendations on ways to reduce the number of accidents at rail-highway crossings.

Answer. The most effective method of continuing the reduction in the number of accidents is through the continuation of the national grade crossing improvement program funded under Section 203 of the 1973 Highway Act. The national highway/rail grade crossing safety improvement program has been proclaimed by many to be the most effective highway safety program on record. The implementation of that program has occasioned a precipitous decline in the number of accidents involving motor vehicles at public grade crossings. Fatalities resulting from such accidents declined from 1,128 in 1974 to 482 in 1983, a decrease of 57 percent.

In addition, the public education program involving education, enforcement and engineering conducted through "Operation Lifesaver" is supplementary to and compounds the benefits of the federally sponsored rail-highway grade crossing improvement program. Funded largely by railroads, this program takes advantage of one of the most effective tools for reducing accidents at both public and private crossings—public education. Administered nationally by the National Safety Council and staffed by a full time coordinator, this program is now active in 40 states. Federal support and encouragement of this program would be most beneficial.

The AAR has gone on record in requesting that Congress direct the Secretary of Transportation to re-examine the Section 203 program. In the Highway Safety Act of 1970, Congress directed the Secretary of Transportation to conduct a full and complete investigation and study of the problem of providing increased highway safety at highway-rail grade crossings. That study, published in two parts in 1971 and 1972, provided a comprehensive statement of the problems. Those studies influenced the subsequent adoption of the Section 203 program. In our view, this is an appropriate time for Congress to direct the Secretary of Transportation to conduct a comprehensive study and investigation of highway-rail crossing improvement and maintenance needs. Such a study should include an assessment of the future direction of the current program dealing with such factors as safety, capacity, congestion, highway traffic flows, crossing maintenance and educational programs.

Question. In testifying before the Committee, Mr. Riley indicated that he had encouraged the Brotherhood of Railroad Signalmen and the AAR to get together to create an inspection system that would address the highway-rail crossing problem and not overtax safety resources. Have you followed up on Mr. Riley's recommendation? If not, why not? What are the chances of you working out something in this area?

Answer. As the record shows the Brotherhood of Railroad Signalmen, with the cooperation of the AAR Communications and Signal Division, developed proposed standards for inspection, maintenance and testing of highway-rail grade crossing warning devices. On the basis of the administrative record developed by the agency, FRA concluded that federal inspection, maintenance and test standards would not be justified. We concur in that conclusion on the basis of the record.

At the hearings on March 9, Mr. Riley announced that his agency would again examine the highway-rail grade crossing safety record to determine whether Federal action is necessary. We look forward to cooperating with the Brotherhood of Railroad Signalmen and the FRA in that effort. However, as noted above the AAR has already recommended that the Secretary of Transportation be directed to conduct a comprehensive study of highway-rail crossing improvement and maintenance needs. We believe that such a study involving the Federal Highway Administration, the

Federal Railroad Administration, the states and state organizations, rail unions and the railroads is necessary to focus on the many facets of the grade crossing issue.

Question. Are you aware of any cases that have been brought under the 1980 Safety Act prohibiting railroads from dismissing or discriminating against employees who complain about safety violations or refuse to work in dangerous situations? What is the status of any such cases? Are there any other procedures for addressing cases like these? For example, do collective bargaining agreements provide remedies for such cases? How many cases have been brought under these other procedures?

Answer. In enacting section 212 of the Federal Railroad Safety Act in 1980, Congress was essentially codifying the long standing available remedy for rail employees of filing grievances and obtaining redress for wrongful dismissal or other disciplinary action under existing collective bargaining agreements. Prior to 1980 rail employees could and did obtain reinstatement and back pay when wrongfully dismissed for refusing to work under dangerous conditions. The remedy is pursued in accordance with procedures established pursuant to section 3 of the Railway Labor Act.

In the time available it has not been possible to survey the entire industry to determine the number of grievance proceedings which have been filed seeking relief pursuant to Section 212. Our search of the recent National Railroad Adjustment Board awards located only one case in which there was a reference to Section 212 but it did not involve an employee complaining of or testifying about unsafe conditions or refusing to work (National Railroad Adjustment Board, Second Division, Award No. 9405). In that case an employee had been suspended without pay for a 10-day period for parking her automobile in a "No Parking" zone on railroad property in violation of a company safety rule. While the Award is not entirely clear, the case almost surely involved circumstances which were not intended to be covered by Section 212. The Board expressed the opinion that it did not have jurisdiction to interpret the Federal law, but overturned the disciplinary action by awarding the employee back pay for the 10-day suspension period. The Board's opinion about its jurisdiction under § 212 is plainly incorrect on the face of the statute, but presumably the Board paid scant attention to the question because it awarded back pay on other grounds and because the facts did not raise a tenable § 212 issue. Other opinions rendered by the Board over many years make it clear that the Board will not sustain disciplinary action where the employee refuses to work under unsafe conditions or where the performance of duties would violate Federal and company safety rules. Both before 1980 and since enactment of Section 212 the decision of the Railroad Adjustment Board and the so-called Public Law Boards have been consistent with that section in protecting the rights of employees. Importantly, the very small number of cases dealing with the issue is indicative of the rarity of occasions in which employees claim to be harassed by their employers.

Significantly, the request by the Railway Labor Executives Association would grant to rail employees a remedy not available to any other class of employees in the country—punitive damages. The 1980 amendment was intended to give Congressional recognition to the fact that railroad employees have the same protection as employees in other industries. That was accomplished. No justification has been shown to expand those remedies.

Question. Do you have any comments on FRA's proposed amendment to the Railroad Safety Act that would confirm FRA's authority to seek enforcement of a subpoena or order issued under that statute through a proceeding in an appropriate federal district court? FRA says this is a technical amendment, prompted by the absence of such a provision in existing law, which would remove any doubts concerning FRA's authority to enforce its subpoenas and orders.

Answer. While this is clearly more than a "technical" amendment, the AAR does not oppose FRA's request for the addition of the enforcement provision in section 203 of the Federal Railroad Safety Act.

Question. Do the statistics on casualty and train accidents referred to in your testimony reflect reductions in traffic and employment levels over the last few years? If not, would you please adjust these statistics so they they do?

Answer. In my oral testimony on March 9, I presented the raw data reflecting decreases in rail related fatalities, rail employee fatalities and injuries and train accidents for the period 1978 to 1983. Significantly, there was also a dramatic improvement on a normalized basis. Between 1978 and 1982 (the last year for which sufficient data is available) the number of fatalities and injuries per million man hours worked and the number of train accidents per billion gross ton miles declined dramatically.

In the "Appendix" attached to the written testimony submitted to the subcommittee I presented an analysis of the rail safety data. Figure 3 of that Appendix pre-

sented the 1978–82 trends in train accidents per billion gross ton milies by accident type. Mainline derailments per billion gross ton miles declined 58 percent, yard derailment rate decreased by 55 percent, collisions by 46 percent and all other accidents by 34 percent.

The data were also set forth to portray the accidents categorized into four cause groups—Track, Equipment, Human Factors and Miscellaneous. The 1978–82 trend in each of these cause categories declined for both mainline and yard derailments on a gross ton mile basis. Between 1978 and 1982 the Track-caused mainline derailments per billion gross ton miles decreased 62 percent. The mainline derailment per billion gross ton miles for Equipment, Human Factors and Miscellaneous causes decreased 60, 52 and 43 percent respectively over the past five years. Yard derailment rate (events per billion gross ton miles) for Track, Equipment and Human Factors each decreased about 56 percent between 1978 and 1982. The yard derailment rate for Miscellaneous causes decreased 43 percent.

Tables in the Appendix also showed trends in employee casualties per million man hours worked. The rate of employee fatalities, illnesses and injuries have each declined since 1978. Employee fatalities per million man hours decreased 32 percent, lost time injuries decreased 60 percent, minor injuries decreased 29 percent and occupational illnesses decreased 47 percent.

Happily, rail safety is improving by any measure!

Question. The National Transportation Safety Board (NTSB) has advised the Committee that several railroad accidents and incidents suggest the possibility that railroad bridges and tunnels are not being adequately maintained and inspected. What are your views on this matter? Do you think FRA needs to establish minimal safety standards concerning such structures, as suggested by NTSB?

Answer. Railroad bridges and tunnels are being maintained and inspected at a level far beyond that necessary for safety. There are instances in which derailments have occurred on bridges and in tunnels, but that does not necessarily mean that any bridge or tunnel design, construction or maintenance practice contributed to those accidents. We understand that there have been no accidents and no fatalities subjected to a major investigation by NTSB involving questions as to the design, construction or maintenance of railroad tunnels.[1] In fact, a 1980 search of official federal records revealed that there have been no fatalities in the United States due to a structural failure of a railroad bridge in over 40 years. No fatalities due to railway bridge failures have occurred since that study, making nearly a half century of fatality-free operation over railway bridges.

This excellent safety record is due to a combination of the very conservative design of most railroad bridges and the methodical and well-organized way that the railroads do their bridge inspection. After the collapse of a highway bridge over the Ohio River in 1967, railroad bridge inspection procedures were used as a model for the improvement of bridge inspection on highways. Excellent inspection procedures continue in effect on railroads today.

There have been railroad bridges for as long as there have been railroads and railroads have always been concerned with their proper construction and maintenance. Today we have about 144,000 railroad bridges with a total length of about 3,400 miles. Total length of tunnels on AAR member roads is about 200 miles. AAR member railroads employ structural engineers whose primary duty it is to ensure that bridges, tunnels, and other structures are properly maintained and inspected so that they will be capable of carrying the traffic that must be run over or thought them. Each of our railroad bridges receives a careful inspection at least once a year and often more frequently than this. This is not a once-over-lightly inspection; it is thorough and detailed. On a large railroad the head structural engineer may have hundreds of subordinates, including engineers, inspectors, and maintenance men involved in the inspections.

Periodic inspection and related maintenance, however, are not the only attention given to railroad bridges. Bridges are also rated, that is, their capacity is determined by engineering means based on original design and actual present condition. Bridges are rated for the maximum load and speed allowed for various types of cars and locomotives.

Railroads use an annual publication, "Railway Line Clearances", used by all railroads in routing traffic, that shows the maximum weights and dimensions that can be moved over the various lines of each railroad in the country. Since the railroads have control of their own traffic, traffic is restricted to those loads that can be safely carried.

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[1] Tracks on bridges and in tunnels are subject to FRA's Track Safety Standards. 49 C.F.R. Part 213.

In terms of the conservativeness of railway bridge design, a brief mention should be made of the American Railway Engineering Association recommended practices regarding bridge design, rating, and inspection. These A.R.E.A. documents deal with both the safety and the economic maintenance and construction of bridges, and are not meant to imply in any way that they are minimum safety standards for the bridges. In some cases, railway bridge components have been tested to failure. Reinforced concrete slabs were removed from a line presently owned by the Burlington Northern because of deterioration and were replaced by new beams. The old, deteriorated slabs were tested to destruction and it was found that they could carry three and one-half times the design load in this deteriorated condition.[2]

From what has been said thus far, it is obvious that we feel that no federal intervention is warranted in terms of railroad bridge safety standards, as railway engineering professionals have demonstrated by decades of fatality-free history that such standards are not needed.

Each bridge or tunnel represents an individual situation based on original design, materials used, foundation and soil conditions, expected traffic, previous history of maintenance, and many other factors. Any safety standards would have to be of encyclopedic size to cover all situations without imposing unwarranted restrictions on the safe use of the bridge. No existing set of literature can substitute for individual engineering competence based on detailed knowledge of a bridge and the conditions and environment under which it exists.

We feel that the more people know about railway bridge design, construction, inspection and maintenance and the more detailed their knowledge of the actual situation with railway bridges in the United States, the more secure they will feel that railroad bridge safety is not a problem.

Questions of the Minority and the Answers Thereto

Question. Rail labor is proposing an amendment mandating that only carmen do initial and intermediate brake inspections. As a rationale for this amendment, labor representatives have indicated that they have been "double-crossed" with respect to an agreement which was entered into between FRA, rail labor, and rail management as part of the agreement on the revisions on the power brake regulations. What is your understanding of this agreement referenced by rail labor? In the view of the rail industry, do the revised regulations and their implementation represent the understanding of the parties?

Answer. The language defined the term "qualified person" appearing in the regulations governing the initial terminal road train air brake inspection accurately reflects the agreement reached between rail labor and rail management and accepted by the Federal Railroad Administration. The regulations provide that the test and inspection are to be made by a "qualified person." It was understood that identity of the "qualified person" would be determined in accordance with prevailing work rules as established by collective bargaining agreements. Thus, the term "qualified person" was defined as follows: "Where a carman is to perform the inspection and test under existing or future collective bargaining agreements, in those circumstances a carman alone will be considered a qualified person." 49 C.F.R. § 232.12(a)(1).

This language was developed during discussions in which representatives of rail labor were advised that the carriers could not agree to override existing or future collective bargaining agreements governing work assignment. The suggestion by labor that carmen should forevermore continue to perform the inspections and tests at all locations where carmen were then performing such inspections was specifically rejected. Rail labor was repeatedly advised throughout the discussions that the carriers would not override the specific provision of the collective bargaining agreement.

The national collective bargaining agreement reached in 1964 and amended in 1975 specifically provides that when there is insufficient work for carmen in a given work shift, then it is not necessary to employ carmen for the purpose of making the inspection and test of air brakes. The agreement further provides that if there should be any disagreement as to the amount of work available, the General Chairman of the carmen's union can demand a joint check of the available work. If that joint check does not result in agreement, the carmen may avail themselves of appeal procedures under Section 3 of the Railway Labor Act. By asking that the national agreement be nullified, the RLEA is requesting a Federal law that would

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[2] A.R.E.A. Proceedings, vol. 59, p. 133 (1958).

require the employment of carmen where, by definition, there is not sufficient work to justify the employment of carmen.

Rail labor was not "double-crossed." There was a thorough discussion of this specific matter during the negotiations with labor. It was intended that the inspections and tests would be performed by carmen where they are employed for that purpose and by trainmen where no carmen are employed for that purpose. The agreement and the regulation represented a codification of existing practice. Representatives of RLEA including a representative of the carmen's organization specifically agreed to the language as it appeared in the final regulation. Neither Federal regulation nor Federal legislation should be used as a vehicle for dictating work assignments covered by negotiated contracts between the railroads and labor unions.

Question. Another amendment has been proposed prohibiting sleeping quarters within the vicinity of rail yards. Rail labor is particularly concerned that, counter to the intent of the 1976 law on sleeping quarters, older sleeping quarters in the vicinity of rail yards have not been phased out by the railroads and in fact have been left in disrepair. What is the rail industry's response to these concerns? What has the industry done to improve sleeping quarters?

Answer. The 1976 amendments to the Hours of Service Act "grandfathered" the sleeping facilities located in the vicinity of rail switching operations build prior to July 8, 1976. The law did not require that those facilities be phased out. The provision of sleeping facilities had traditionally been a matter for labor-management negotiations and the 1976 law was only a partial intrusion into that relationship.

Another provision of the 1976 amendment requires that railroads provide "clean, safe and sanitary quarters." 45 U.S.C. § 62(a)(3). The railroads obey that law. If employees have complaints that are not resolved by action by the railroads those railroads are subject to inspection by the Federal Railroad Administration. If the quarters are not clean, if the quarters are not safe, or if the quarters are not sanitary, the railroad is subject to a substantial penalty enforceable by the appropriate United States Attorney. 45 U.S.C. § 64a(a)(1). The Federal Railroad Administration has the duty to lodge with the appropriate United States Attorney information of any violation which may come to its knowledge. 45 U.S.C. § 64a(b). That the railroads are providing "clean, safe and sanitary" sleeping facilities is evidenced by the fact that there have been no court imposed penalties on railroads for failure to provide "clean, safe and sanitary" facilities.

That is not to say that there have not been any employee complaints, or that the FRA has not been called upon to examine sleeping facilities. Importantly, however, railroads are responsive. Working with their employees, the railroads rebuild, relocate and refurbish sleeping facilities. Many of the sleeping facilities are operated by the YMCA and most of those are also open for public use.

RLEA's request that the older facilities be eliminated or relocated would impose a substantial economic burden on the railroads. Based on a recent informal survey, we estimate that there are more than 130 facilities located in the vicinity of yard operations. It is estimated that relocation of those facilities would far exceed $100 million.

There is no compelling need for subjecting the pre-July 8, 1976, sleeping facilities to substantial modification or relocation. It would be unreasonable to require the substantial expenditure of funds to purchase land and build new facilities. As I indicated in my testimony, it would be ironic to require that railroad employee sleeping quarters be removed from the yard to the far side of hotels, motels and private residences which are in many instances located within one-half mile of yard operations.

Question. Concerns have been raised about the fact that the recent rulemaking on jumbo tank cars does not cover smaller tank cars that carry hazardous materials. What is your view of this concern? As part of the industry's cooperative efforts on hazardous materials, what are you doing with regard to the safety of these smaller tank cars?

Answer. The Association of American Railroads believes that the "concern" about smaller pressure tank cars (the only kinds addressed by the recent rulemaking) must be seen in relation to the use of these cars in hazardous materials transportation.

First: Even before the recent rulemaking, all of the affected cars were required to have shelf couplers, believed by many to be the single most effective safety improvement for tank cars in the past decade. The rulemaking requires the retrofit of a thermal barrier, a heavy jacket head and a safety valve sized for an uninsulated car.

Second: The history of tank car accidents shows that smaller cars receive less damage than larger cars, a phenomenon perhaps explained by the lower mass of the smaller car.

Third: Smaller tank cars tend to be built on underframes—as contrasted to the stub design of modern large tank cars—and the location of the end platform on this design puts the head about a foot farther back from an oncoming car than stub sill designs. This may also help to explain the lower incidence of damage to smaller cars.

Based on consideration of the foregoing factors the Federal Railroad Administration recently concluded that the ben*efits* from retrofitting the smaller tank cars do not outweigh the costs which would be involved in an expanded retrofit program.

Question. With respect to the safety of hazardous materials transportation, FRA has testified as to efforts to train rail employees in the handling of such materials. What efforts has the industry made in this regard?

Answer. The improved safety record in the railroad industry is in part attributable to the safety consciousness of its employees. That awareness is fostered through employee training programs. Since safety considerations are an inherent part of all aspects of railroad operations, virtually all training programs are devoted in one way or another to safety. The training process is a continuing part of railroad employment. There is a day-to-day involvement by supervisors in operations and on-the-job checks on safety practices. Attendance at safety meetings and rules classes is a condition of employment. In these safety meetings and rules classes, employees receive specific instructions on Federal regulations governing the handling of hazardous materials.

In cooperation with shippers and railroad equipment suppliers, work is currently being done on further improvement in containers and handling procedures. Two audio-visual presentations are being developed. One is for shippers' personnel. It describes the inspection procedures to be used prior to the loading of tank cars to ensure that they are suitable for loading, and after the loading of tank cars to ensure that the cars are safe for movement. The second presentation is for railroad employees. This presentation describes the car inspections performed at major terminals when empty cars are en route to shippers for loading. It also describes the required inspections by crews prior to moving loaded cars from a shipper's facility, and the more detailed inspections that are performed at the initial terminals where the loaded cars are placed in trains for movement to their destinations.

Training and instruction goes beyond railroad employees. Since 1907 the AAR's Bureau of Explosives has been one of the nation's leading organizations in the promotion of safe transportation of dangerous commodities. The Bureau's inspectors visit several hundred hazardous materials shipping points each year, inspecting packaging and loading procedures and helping those who actually load cars comply with the regulations and with safe shipping practices.

Hazardous materials safety measures involve more than just the handling of those materials. Virtually all railroads have emergency response plans and most railroads have committed these plans to writing. In terms of generating the proper response to a hazardous materials incident the railroads, through the Bureau of Explosives, have developed an emergency response manual entitled Emergency Handling of Hazardous Materials in Surface Transportation. Approximately thirty thousand have been distributed to railroads, fire departments and other agencies. Individual railroads and the AAR work with police and fire departments and conduct seminars with local response agencies to enhance the abilities of those agencies to manage hazardous materials incidents.

In the late 1970's an Inter-Industry Task Force on Rail Transportation of Hazardous Materials was formed. The task force created a training program including a slide presentation for fire departments and other agencies involved in emergency response. It has been shown to nearly 200,000 emergency response personnel nationwide.

Railroads are continuing their efforts to maintain their role as the safest mode for the tranportation of hazardous materials. Emphasis on the training of employees, shipper and emergency response personnel is an important part of those efforts.

Senator DANFORTH. Our next panel is a State panel. We will have Charlotte Musgrave of the Missouri Public Service Commission and William Druhan of the National Conference of State Railway Officials.

Charlotte, I regret to say that your name tag bills you as Mr. Musgrave.

STATEMENTS OF CHARLOTTE MUSGRAVE, COMMISSIONER, MISSOURI PUBLIC SERVICE COMMISSION, AND WILLIAM T. DRUHAN, NATIONAL CONFERENCE OF STATE RAILWAY OFFICIALS

Ms. MUSGRAVE. Well, you can tell the difference, can you not?

Senator DANFORTH. From my warm knowledge of you, I want to assure you and everyone that that is inaccurate.

Ms. MUSGRAVE. The hat does belong to Mr. Musgrave, but I cannot take it off. I have had it on for so long today.

Senator DANFORTH. Go ahead, Charlotte.

Ms. MUSGRAVE. Thank you for the opportunity to be here today. I am testifying on behalf of the National Assocation of Regulatory Utility Commissioners. The members of the NARUC greatly appreciate your invitation to make known our views on the reauthorization of the Federal Railroad Administration's railroad safety program. The NARUC is particularly interested in the future of this program, as our members include those State regulatory entities which are current or potential participants in the rail safety grants in aid program.

Therefore, we strongly support the reauthorization of this program as well as the appropriation of special funding to insure its continued viability. Relying on a vital Federal-State partnership, the rail safety program is similar to the highly successful national gas pipeline safety grants in aid program and the newly created commercial motor vehicle safety grants in aid program.

As administered by the FRA, States which adopt Federal safety regulations are certified to enforce those regulations. The program provides for up to 50 percent in Federal funds to assist participating States in carrying out that mandate. If the State agency chooses not to assume responsibility, the Federal Government automatically bears the burden and must pay 100 percent of the costs of the program.

The program requires the FRA to annually approve the States' activities to assure compliance with Federal safety standards. Currently agencies in 32 States are certified under the program, evidencing their obvious commitment to assuring railroad safety. This figure represents an increase over last year, when only 30 States participated. The number of inspectors has also increased, from 92 in 1982 to 100 in 1983, and to 111 in 1984.

The effectiveness of the rail safety program is well documented, and represents a sound investment in a comprehensive safety plan. According to the General Accounting Office report, State participation in rail safety enforcement has had a positive effect by supplementing the FRA's inspection force.

As a result of this Federal-State partnership, each year the Nation's rail system destroys fewer lives and causes less property damage. It seems incomprehensible at a time when the rail safety grants in aid program is achieving the results which were hoped for at its inception that the FRA is seeking its demise.

However, as last year, the FRA has once again requested no funding for the State safety program. Such a move runs counter to the regulatory policy of encouraging State participation in lieu of increased Federal involvement in local program implementation.

An FRA representative testified before the Subcommittee on Transportation and related agencies of the House Committee on Appropriations on April 13, 1983, that if the program were eliminated, 79 State inspectors would continue to receive funding by a total of 14 States.

That claim is unsubstantiated. The reports we have received from our participating member agencies is that without Federal matching funds, budgetary restrictions may force many to reduce their level of participation or withdraw from the program entirely.

If the State participation program is eliminated, it would impact on the State of Missouri thusly. We have currently three track inspectors. At least one, but probably two of the inspectors would be reassigned to handle or assist in other railroad safety areas, that is, in grade crossings, employee safety, or Operation Lifesaver. This would reduce our level of track safety inspectors by an estimated 35 to 45 percent per year.

Even if additional track safety inspectors are brought in to inspect the other track, an inconsistent and overlapping inspection program will result simply because of a lack of coordination. I say this because if FRA does not want to provide part of our funding, Missouri will probably not be able to help them enforce their own standards.

The advantages to the present program in addition to the obvious value in protecting public safety lies in the fact that it encourages the States to contribute their own funding and manpower to assist the Federal Government in fulfilling its various transportation safety responsibilities. Utilizing State resources to implement safety standards reduces the need for a large Federal field staff.

In recognition of this fact, last year Congress appropriated $2.4 million for the program. We respectfully request that the subcommittee reiterate its support for this important program by approving its reauthorization for its funding of $2.9 million in the fiscal year 1985 FRA budget in order to continue at least partial Federal funding of this program.

The GAO has been critical of FRA's implementation of the program in the past, specifically citing FRA's reluctance to encourage State participation. Specifically, the NARUC believes that State participation in enforcing Federal rail safety standards must be based upon strong cooperation and understanding between the States and the Federal Government.

The advantage of Federal and State partnership in enforcing railroad safety regulations, the dollars saved in preventing property damage, and the immeasurable value in protecting lives are adequate justification for the continued authorization. However, this program offers an additional beneficial feature in that the financial burden is shared by both the Federal and State governments. In this time of necessary budget restraints, such an arrangement is practical and efficient.

Thank you.

[The statement follows:]

STATEMENT OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Mr. Chairman and Distinguished Members of the Subcommittee: My name is Charlotte Musgrave and I am a commissioner with the Missouri Public Service

Commission. I am testifying today on behalf of the National Association of Regulatory Utility Commissioners, commonly referred to as the "NARUC". Accompanying me today are Paul Rodgers, NARUC General Counsel and Administrative Director and Linda Kent, NARUC Director of Congressional Relations.

The NARUC is a quasi-governmental nonprofit organization founded in 1889. Within our membership are the governmental agencies of the fifty States and the District of Columbia, Puerto Rico and the Virgin Islands engaged in the regulation of utilities and carriers. Our chief objective is to serve the public interest by seeking to improve the quality and effectiveness of government regulation.

The members of the NARUC greatly appreciate your invitation to make known our views on the reauthorization of the Federal Railroad Administration's (FRA's) railroad safety program. The NARUC is particularly interested in the future of this program as our members include those State regulatory entities which are current or potential participants in the rail safety grants-in-aid program. Therefore, we strongly support the reauthorization of this program as well as the appropriation of sufficient funding to ensure its continued viability.

FUNDING FOR THE RAIL SAFETY GRANTS-IN-AID PROGRAM

As authorized by section 206 of the Federal Railroad Safety Act of 1970 [1] the State safety program provides that the States voluntarily implement and enforce Federal standards in order to improve our Nation's transportation safety. In order to achieve that essential public goal, the program relies upon a vital Federal/State partnership.

The rail safety program is similar to the highly successful natural gas pipeline safety grants-in-aid program and the newly created commercial motor vehicle safety grants-in-aid program.[2] As administered by the FRA, States which adopt Federal safety regulations are certified to enforce those regulations. The program provides for up to fifty percent in Federal funds to assist participating States in carrying out that mandate. If a State agency chooses not to assume responsibility, the Federal government automatically bears the burden and must pay 100 percent of the costs of the program. The program requires the FRA to annually approve the States' activities to ensure compliance with Federal safety standards.

Currently, agencies in 32 States are certified under the program evidencing their obvious commitment to assuring railroad safety.[3] This figure represents an increase over last year when only 30 States participated. The number of inspectors has also increased: from 92 in 1982, to 100 in 1983, and to 111 in 1984.

The Federal funds allocated to the program have been put to effective use, permitting many States to establish and/or to perfect State-level safety activities. It is largely through the efforts of the State inspectors that railroad accidents have been reduced.

The effectiveness of the rail safety program is well documented and represents a sound investment in a comprehensive safety plan. According to a General Accounting Office (GAO) report, State participation in "rail safety enforcement has had a positive effect by supplementing [the] FRA's inspection force." [4] As a result of this Federal/State partnership, each year the Nation's rail system destroys fewer lives and causes less property damage. FRA figures for 1983 show train accidents declining to an all time low-fifteen percent below the total for 1982. Railroad accidents attributed directly to faulty tracks decreased 22.2 percent in 1982 and equipment-caused accidents have dropped by 21.8 percent for the same year. These types of accidents are preventable and have been the focus of the program.

The above-noted statistics evidence the fact that this program works. No longer is the railroad industry plagued by the 11,000 accidents per million train miles that prompted the establishment of the Federal rail safety program in 1970. At that time, Congress agreed that an active State role was essential to assure a safe railroad system. It is through the combined efforts of Federal and State officials, as well as of railroad management and labor that rail accidents have decreased.

It seems incomprehensible that, at a time when the rail safety grants-in-aid program is achieving the results which were hoped for at its inception, the FRA is seeking its demise. However, as last year, the FRA has once again requested *no* funding for the State safety program. Such a move runs counter to the regulatory policy of

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[1] 45 U.S.C., Sec. 435.
[2] 49 U.S.C., Sec. 1674 and 49 U.S.C., Sec. 2302, respectively.
[3] For a list of the participating States, see Appendix.
[4] Report by the Comptroller General of the United States, The Federal Approach to Rail Safety Inspection and Enforcement: Time for Change (Apr. 19, 1982), p. 39.

encouraging State participation in lieu of increased Federal involvement in local program implementation.

An FRA representative testified before the Subcommittee on Transportation and Related Agencies of the House Committee on Appropriations on April 13, 1983 that the decision to terminate the program was purely fiscal. However, without State participation, the Federal government would have to assume the full costs of rail safety inspection rather than only half that amount.

The FRA also testified that if the program were eliminated, 79 State inspectors would continue to receive funding by a total of fourteen States. That claim is unsubstantiated. The reports we have received from our participating member agencies is that without Federal matching funds, budgetary restrictions may force many to reduce their level of participation or withdraw from the program entirely. States that may be able to continue operating a limited State rail program may lose their incentive to cooperate with Federal safety efforts. Any Federal cut-backs will reverse the trend toward safer railways which directly correlates with active State involvement in safety enforcement efforts and will increase the resources the Federal government will have to provide if required to completely fund the program.

The advantage of this program, in addition to its obvious value in protecting public safety, lies in the fact that it encourages the States to contribute their own funding and manpower to assist the Federal government in fulfilling its various transportation safety responsibilities. Utilizing State resources to implement Federal safety standards reduces the need for a large Federal field staff. In addition, the Federal government gains the benefit of State expertise when enforcement responsibilities are carried out by officials best able to assess the unique requirements of a particular locality.

With 300,000 miles of railways and 1.7 million freight cars, this Nation cannot afford to curtail its rail safety program. In recognition of this fact, last year Congress appropriated $2.4 million for the program. We respectfully request that the Subcommittee reiterate its support for this important program by approving its reauthorization with funding a $2.9 million in the fiscal year 1985 FRA budget in order to continue at least partial Federal funding of the program.

ADMINISTRATION OF THE GRANTS-IN-AID PROGRAM

As important as adequate and dependable funding is to the rail safety program, a true Federal-State partnership is essential to an effective program. The GAO has been critical of FRA implementation of the program in the past, specifically citing FRA's reluctance to encourage State participation and its reticence in providing the proper guidance to the States.[5] Specifically the NARUC believes that State participation in enforceing Federal rail safety standards must be based upon strong cooperation and understanding between the FRA and the States. During the early years of the State participation program, relations between the FRA and the participating State agencies were often strained and confrontational. We believe that this adversarial relationship discouraged new States from entering the program, while at the same time resulted in inefficiencies in the praticipating States.

In later years, the relationship between the FRA and the States began to improve. We trace this improvement to the success of the State/Federal Task Force on Improvement of the State Participation Program which met in 1980. As result of the work of this Task Force, which was comprised of FRA and State representatives, a spirit of cooperation and understanding began to appear in the Federal/State program. Unfortunately, the Task Force has not met since that time, despite recent State and industry attempts to revive it.

Better Federal-State communication would also help avoid any duplication of inspection efforts. Under current policy, the FRA requires monthly activity reports from the States but provides no reciprocal report to the States. This sometimes forces States to "second guess" the FRA, building the potential for duplicate efforts into the system. A stronger FRA railroad safety management program will help Federal and State inspectors to better perform their responsibilities.

In addition, we believe that the FRA must make serious efforts to solicit the participation of States not currently in the program. As noted, the relationship between the FRA and the States has at times been strained. By improving its relationship with the States currently participating in the program, and by encouraging nonparticipants to enter, we believe that the Federal/State rail safety partnership can be as successful as that which was established to oversee the natural gas pipeline safety program.

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[5] *Ibid*, p. 41.

CONCLUSION

The growing level of State participation and the corresponding decrease in the number of rail accidents stand as the best evidence of the importance of the FRA's State rail safety program.

The advantages of the Federal-State partnership enforcing railroad safety regulations—the dollars saved in potential property damage and the immeasurable value in protecting lives—are adequate justification for the continued authorization of the program and for the provision of full funding. However, this program offers an additional beneficial feature in that the financial burden is shared by both the Federal and State governments. In this time of neccessary budgetary restraint, such an arrangement is practical and efficient. The alternative suggested by the Reagan Administration is to eliminate all funding, which places at risk the continuation of this essential safety program. Accordingly, we seek your help in preserving the State rail safety program.

GRANTS-IN-AID: NUMBER OF STATES AND PARTICIPATING INSPECTORS AS OF FEBRUARY 1, 1984

State	Track inspectors	Motor, power and equipment (MPE) inspectors	Operating practices inspectors	Signals and train control inspectors	Total
Alabama	2	2			4
Arizona	[1] 1(1)	1	1		4
California	2	1			3
Connecticut	1				1
Florida	2	2			4
Illinois	4				4
Iowa	3				3
Kansas	1				1
Louisiana	1				1
Maryland	[1] 1(2)	[1] 2(1)	1		7
Michigan	4				4
Minnesota	1				1
Missouri	3				3
Montana	1				1
Nebraska	1	1			2
Nevada	1				1
New Hampshire	1				1
New Jersey	[1] 1(1)				2
New Mexico		1			1
New York	3	[1] 3(3)			9
North Carolina	2	1			3
Ohio	3	4			7
Oklahoma	2				2
Oregon	2	2			4
Pennsylvania	4	3			7
South Carolina	1	1			2
Tennessee	2	2	1		5
Texas	3	2	3		8
Utah	1	1			2
Virginia	2				2
Washington	2	2	1	1	6
West Virginia	[1] 2(1)	3			6
Total (32 States)	65	38	7	1	111

[1] Denotes non-federally funded.

NATIONAL ASSOCIATION OF REGULATORY
UTILITY COMMISSIONERS,
Washington, D.C., March 22, 1984.

Hon. JOHN C. DANFORTH,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science and Transportation, United States Senate, SH-427 Hart Senate Office Building, Washington, D.C.

DEAR SENATOR DANFORTH: Pursuant to your request of March 14, 1984, enclosed is a copy of the results of a survey conducted by the NARUC Staff Subcommittee on Railroad Safety regarding State participation in the Federal Railroad Administration's (FRA's) Rail Safety Grants-In-Aid Program.

As you know, the NARUC has strongly endorsed this Federal/State partnership program as an effective and economical approach to ensuring railroad safety. We are very concerned that the FRA is seeking to eliminate the program which we fear will prove detrimental to current safety efforts. Indeed, as our survey indicates, only seven of 23 responding State agencies would remain in the program if the 50 percent Federal funding was eliminated.

In addition, enclosed is a copy of the results of an annual survey conducted by the NARUC and included in its 1982 Annual Report on Utility and Carrier Regulation on highway-railroad crossings. The table provides an overview of State jurisdiction in this area. The remaining pages contain specific information on personnel, funding as well as problems and solutions for each State.

The problems identified by the States concerning highway-railroad crossings include: lack of sufficient funding for adequate protection, driver carelessness, inadequate signals and/or warning devices, and improper warning equipment maintenance. The States indicate that these problems can be resolved through: increased funding for safety programs at both the Federal and State levels, improved driver education, stronger enforcement of present safety regulations and the installation of additional devices such as advanced warning signals. Overall, we believe that strong State authority over existing and new crossings to ensure adequate oversight of location, safety and closures, as well as advanced warning signals, combined with routine State inspection programs will greatly reduce the number of accidents at highway-railroad crossings.

Thank you for this opportunity to be of service. I hope the information provided will be helpful to you. If you have any additional questions, please do not hesitate to let me know.

Cordially,

LINDA KENT,
Director of Congressional Relations.

Enclosures.

STATE RAIL SAFETY PROGRAM FUNDING QUESTIONNAIRE

PURPOSE

This questionnaire is submitted to you for the purpose of developing data on your state rail safety program, as well as your position on various questions that appear to be at issue regarding continued federal funding for state participation programs. Your answers will be made part of a report describing the position of all the participating states.

BACKGROUND

For the past two years, the budget proposed by the U.S. Department of Transportation (DOT) has not included funding for state rail safety programs. The House of Representatives has gone along with the DOT budget proposals each year, while the Senate has added the funding. Through the conference committee process, funds for the state participation program have been appropriated.

The June 16, 1983, report of the House Committee on Appropriations included data from the Federal Railroad Administration (FRA) to the effect that state rail safety programs support 93 inspectors in 30 states. FRA claims that only seven states with 14 inspectors potentially would drop out of the program if federal funding is eliminated. The Committee believes that if this were true, the $2.5 million appropriated for the program, spread across 14 state inspectors in fiscal year 1983, effectively costs the government $178,571 per inspector. The Committee also understands that 15 of 30 states assess fees on railroads operated in the states for their rail safety programs. It is assumed that states could raise their assessment levels to

cover proposed reduction in federal funds. (This logic is questionable, since it seems to assume railroads should pay 100 percent of the cost of the rail safety program.)

It is important for those states involved in the rail safety program to develop and maintain information that is relevant. Such information is absolutely essential in order for Congress to evaluate the effectiveness of federal/state programs and provide the funds for its continuation.

TARGETS

It is very important that each state fill out this questionnaire as completely as possible and return it to this office by March 1, 1984. This data will be compiled for use in the State/Federal Task Force on Improvement of the State Participation Program discussions.

This information will also be used to support the state's request to Congress for continued funding when Congress takes up the fiscal year 1985 budget. Data and comments as reported by the House Committee in their consideration of state rail program funding appear to be less than fully documented. Hopefully, through this questionnaire, we can document our information and prove our case on this issue. Your help is appreciated.

QUESTIONNAIRE

STATE RAIL SAFETY PARTICIPATION PROGRAM

1. What are the sources of the state's share of funding for this program?

Dedicated funds (from the railroads)—AL, IL, KS, MO, NH, OH, OR, PA, TN, VA, WA, WV	12
Other sources?—AZ, CA, MI, MT, NE, NC, NV, NM, OK, TX, UT	11
Combination of sources?—(What percentage and sources?)	
Total	23

2. If federal funding for state participation is eliminated and you continue in the program with state funds, would you have to assess railroads operating in your state at a higher level than currently?

Yes—CA, IL, KS, MO, NH, OH, OK, OR, PA, VA, UT, WA, WV	13
No—MI, MT, NE, NV, NM	5
No answer—AL, AZ, NC, TN, TX	5
Total	23

Need Legislative Approval: Yes—AZ, IL, KS, NE, NV, NM, OK, OR, VA, WA. No—None.

Could Expect Legislative Approval: Yes—None. No—IL.

3. Does your legislature meet annually or biannually?

Annual—AZ, CA, IL, KS, MI, MO, NM, OH, OK, PA, TN, VA, WA, WV	14
Biannual—MT, NE, NV, NH, NC, OR, TX, UT	8
No Answer—AL	1
Total	23

4. If federal funding is eliminated or reduced between legislative sessions, does your state have a system to provide needed funds during the budget period?

Yes—AZ, CA, KS, MO, NE, NV, NH, OH, OR, PA, VA, WA	12
No—IL, MI, MT, NM, NC, OK TN, TX, UT, WV	10
No answer—AL	
Total	23

5. What is the size of your current rail safety program?

	State participation	Other
Total personnel?		
Number of inspectors (field personnel)?	83	132
Number of managers?	(1)	(1)
Number of office employees (clerks, secretaries, etc.)?	(1)	(1)

[1] Generally state managers and clerical personnel are shared between programs.

6. What safety areas do you participate in currently?

	Yes/no	Number of inspectors
a. FRA program:		
Track (1) [1]	21	51
Equipment	13	26
a. Freight car		16
b. MP & E		11
Operating practices (2) [1]	3	5
Signal and train control (2) [1]	1	1
Hazardous materials		
b. State programs		132
Clearances		(2)
Walkways		(2)
Sanitation		(2)
Crossings		(2)
Operations		(2)
Hazardous materials		(2)
Other (identify)		(2)

[1] Indicates number of states planning to expand into additional safety areas if federal funding continues.
[2] States generally use multidiscipline personnel in these program areas.

7. What effect would the following actions have on your program: Federal funds reduced by 50 percent; 100 percent.

Analysis

Inspectors:

States planning to stay in program regardless of funding. AZ—4, NH—1, VA—2	7
States that would reduce inspector levels if funding eliminated—Inspectors to be retained. NC—1, TX—6, NV—1	8
States planning to keep inspectors but refuse to cooperate with FRA TN—5	5
Confirmed inspector positions if funding is eliminated.	20
States uncertain of continued participation if funding is eliminated. IL—4, KS—1, NE—2, MO—3, OH—7, OK—2, PA—7	26
States that would reduce inspector levels if funding cut 50 percent. CA—1, NC—1, OR—2, TX—3, WA—3, WV—3	13
States that would reduce but not drop program if funds eliminated. TX—5	5
States that would drop program if funding eliminated. AL—4, CA—3, MI—5, MT—1, NV1, NM—1, NC—2, OR—4, UT—2, WA—6, WV—7	36
Total	78
Total inspector positions reported—23 States	87
Inspectors likely to be retained if funding eliminated (percent)	23
Inspectors likely to be lost if funding eliminated (percent)	77

States reporting different inspector levels than reported in FRA's February 7, 1984 Report:
IL—1 less than FRA report, 2 less than authorized by program regulations.
OH—1 less than FRA report.
PA—1 more than FRA report.
WV—3 more than FRA report.

8. Has your agency developed a stategy or taken a policy stand in the event federal funds are: (1) reduced or (2) eliminated? Please describe.

Yes—AL, CA, NE, NV, NH, NM, NC, OH, OR, PA, TN, TX, VA, WV 14

No—AZ,[1] IL, KS, MI, MO, MT, OK, UT, WA 9

Total 23

[1] State responses varied; however, generally there is much uncertainty regarding the state legislatures providing 100 percent state funds for a program the states see as a federal responsibility.

9. If federal funds were reduced or eliminated, do you feel states should regard the program as a 50/50 partnership? Would you consider FRA a senior partnership?

Yes—NM, VA, WV 3
No—AL, AZ, CA, IL, KS, MI, MO, MT, NE, NV, NH, NC, OH, OK, OR, TN, TX, UT, WN 19
Uncertain 1

Total 23

Would you consider the partnership terminated:

Yes—AL, CA, IL, KS, MI, MO, MT, NE, NV, NA, NC, OH, OK, OR, TN, TX, UT, WN 17
No—AZ, NM, NC, VA, WV 5
Uncertain—PA 1

Total 23

10. If federal funds were reduced or eliminated, would you exercise the same degree of cooperation with FRA as under the present 50/50 funding?

Yes—AZ, NM, WV 3
No—CA,[1] IL,[2] KS, MI, MO, MT, NE, NV, NH, NC, OH, OK, OR,[2] TN, TX, UT, VA,[1] WN 19
No answer—AL 1

Total 23

[1] Concentrate on state priorities.
[2] Some cooperation may be necessary—IL, PA.

11. If federal funds are reduced or eliminated, do you feel rail safety on a national scale will be affected? If so, how?

Yes—AZ, CA, IL, KS, MI, MO, MT, NE, NV, NH, NM, NC, OH, OK, OR, PA, TN, TX, UT, VA, WN, WV 22
No 0
No answer—AL 1

Total 23

STATE COMMENTS

FRA does not have adequate staff to cover states that would drop out.
States provide better coverage, are quicker to respond and do it with less paper.
Reduce coordination between states and FRA.
IF FRA increases staff to compensate for reduced state inspectors, federal costs would increase.
States have proven themselves and contributed to rail safety.
With reduced inspection, railroads would reduce standards of maintenance.
Loss in uniformity if the states do operate on their own.

12. Do you feel the existence of rail safety programs in adjacent states has a positive effect on rail safety in your states?

Yes—AZ, CA, IL, KS, MI, MO, MT, NE, NV, NH, NM, NC, OH, OK, OR, PA, TX, UT, VA, WN 20
No—WV 1
No answer—TN, AL 2

Total 23

STATE COMMENTS

Better continuity, uniformity and safety in the nation's rail system.
Each state's rail safety program helps reinforce adjacent states, especially with equipment since it moves from one state to another.

13. Do you feel that FRA has done a satisfactory job in rail safety? Please explain your answer to each question.

Rulemaking? Yes—HN, OH, VA, NA, TX. No—AZ, CA, IL, KS, MI, MO, NE, NV, NC, OK, OR, PA, TN, UT, WA, WV.

Administration? Yes—KS, NC, PA, TN, VA, WA, NA, TX. No—AZ, CA, IL, MI, MO, NE, NV, NH, OH, OK, OR, UT, WA.

Field inspection? Yes—AZ, KS, MI, NH, OH, VA. No—CA, IL, MO, NE, NV, NC, OK, OR, PA, TN, UT, WA, WV, TX.

Assistance to states? Yes—KS, MO, NH, PA, TN, VA. No—AZ, CA, IL, MI, NE, NV, NC, OH, OK, OR, UT, WA, WV, TX.

Cooperation/Management? Yes—AZ, IL, KS, NH, NC, OH, PA, TN, VA, WV, TX. No—CA, MI, MO, NE, NV, OK, OR, UT, WA.

Training/Technical Assistance? Yes—CA, IL, KS, MI, MO, NV, NH, NC, OH, OR, PA, VA, WA, WV, TX. No—AZ, NE, OK, TN.

Did not answer due to lack of program experience—MT, NM.

No answer—AL.

14. Do you feel FRA's present staff and activity level is adequate?

No—AZ, CH, MO, NE, WA	5
With state participation? Yes—IL, KS, MI, MT, NV, NH, NM, NC, OH, OK, OR, PA, TN, TX, UT, VA, WV	17
Without state participation? No answer—AL	1
Total	23
Yes	0
No—AZ, CA, IL, KS, MI, MO, MT, NE, NV, NH, NC, OH, OK, OR, PA, TN, TX, UT, VA, WA, WV	21
No answer—AL, NM	2
Total	23

15. Were you recently surveyed regarding the Federal/State Participation Program?

Yes—AL, CA, IL, MT, NV, NC, OK, OR, TX, WN, WV	11
No—surveyed by NARUC—OH	1
No—AZ, KS, MI, MO, NE, NH, NM, PA, TN, UT, VA	11
Total	23

Senator DANFORTH. Thank you very much.

Mr. Druhan.

Mr. DRUHAN. Thank you very much, Mr. Chairman.

I have submitted a formal statement, and if I may, I will refer the committee to that and will make a couple of comments so that we do not duplicate each other by reading my statement.

Senator DANFORTH. Thank you.

Mr. DRUHAN. I would like to point out that last year the Appropriations Committee asked the Department of Transportation to submit a plan for transfer of full fiscal responsibility for the Railroad Safety State Participation program to the States. The committee directs that the transfer occur in a way as not to require an increase in Federal inspectors or to jeopardize the state safety program. FRA responded on February 7. I direct the committee's attention to that letter because in my judgment it does not respond to the request of the committee.

You asked Mr. Riley the question, what would happen if the program funding were eliminated, and he responded there is a difference of opinion as to how many inspectors would or would not stay. He pointed out that it is a matter of cost benefit. If inspectors would stay without Federal funding, then it is a cost benefit to the Federal Government to terminate the funding.

I say that it is an improper methodology of ascertaining a cost-benefit ratio to say if you can put this monkey on the back of the States, we get a free ride, so let us put the monkey on the States. That is not what this program is all about.

FRA's response to the committee request did not indicate that they were going to take on any additional inspectors, which was the requirement. They did indicate that there would be some State inspectors that would drop out of the program. They used a figure of 31 out of 101. We submit that the retention rate will not be that high. However, if the figure is accurate, then there will be a shortage of safety inspectors, because FRA has no plans to increase them. If their figure is overstated, if they missed their mark, then you have a serious safety problem.

The other point that we would like to make is one that NARUC has referred to but which neither Mr. Riley nor the others have referred to. That is this program is based on a Federal-State partnership relationship. If it can be argued that the States will retain the same number of inspectors in the program if Federal funding is eliminated, we submit they will not have a partnership. What you are going to get is chaos and confusion between the two types of inspectors.

Mr. Dempsey said that he had no position with regard to the program other than the fact he did believe the State inspectors were qualified, but he preferred a Federal inspector because of uniformity. Mr. Riley admits that there will be some State inspectors even without Federal funding, but you are not going to have any uniformity. It was because of that very problem that Congress initiated the program in 1970. You have now eliminated the confusion. You have eliminated duplication. You have uniformity. If you eliminate the funding, you revert back to that condition which existed before 1970.

Again, I would just refer you to my statement. It goes through the history of the program with its many problems. I do not believe that is germane to your time at this late hour.

[The statement follows:]

STATEMENT OF WILLIAM T. DRUHAN, REPRESENTING THE NATIONAL CONFERENCE OF STATE RAILWAY OFFICIALS, A STANDING COMMITTEE OF THE AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS

Mr. Chairman, my name is William T. Druhan. I appreciate very much your invitation to appear here this morning to express the views of the National Conference of State Railway Officials (NCSRO) on the Railroad Safety State Participation Program.

This program was established by the Federal Railroad Safety and Hazardous Materials Transportaion Control Act of 1970. The program was devised to overcome inadequacies in existing federal and state rail safety regulations, alarming safety problems, and the necessity for active state participation to assure a much higher degree of railroad safety in the years ahead. Congress was convinced at that time that the safety of the nation's railroads which had a deplorable record, would not be advanced if it continued to be subjected to a variety of enforcement procedures in 50 different judicial and administrative systems.

The essence of my testimony is to support the continuation of funding for the program at a level of between $3 to $4 million to assure state involvement and thereby prevent a return to the unacceptable conditions which existed prior to enactment of the 1970 Act.

The Act made it clear that rail safety enforcement is unquestionably a responsibility of the federal government. The purpose of the Act was not to abrogate this responsibility but rather to form a partnership with the states to assist in solving a

mutual problem. State participation in the program is encouraged by the payment of up to 50 percent of state program costs by the Federal Government. States perform the rail inspection function with state inspectors. The FRA, on the other hand, supplements the state inspectors and conducts all of the inspections in those states not participating in the program. FRA also monitors the overall administration of the program. This partnership has provided a uniform enforcement of the federal standards among the states.

When enacted there was a unanimity of opinion that this program was necessary. Also, there was no question regarding the paramount importance for rail safety. Nevertheless, this program has had a serious struggle throughout its 14 year existence. Congress continuously prodded the Federal Railroad Administration from 1971 to 1980 to increase the number of states participating in the program. Every year during this period the Congressional reports accompanying authorization acts and transportation safety acts admonished the FRA to fully implement the 1970 Act in accordance with the Congressional mandate. For example, the House report accompanying the Transportation Safety Act of 1974 stated, "Unfortunately, the Committee does not find evidence of a sense of commitment on the part of the Federal Railroad Administration. . . . Indeed, the Committee was alarmed at . . . the manner in which the agency responds to the intent of Congress in the 1970 Act." Similarly, the House report accompanying the Federal Railroad Safety Authorization Act of 1975 stated, "Testimony before the Committee by FRA tends to support the Committee position that more inspection and enforcement activities are essential to any immediate improvement in railroad safety." This report further stated, "The Committee feels that FRA should move expeditiously to encourage more states to participate in the enforcement of federal rail safety regulations." Efforts were subsequently made by FRA and the states to correct these deficiencies. Unfortunately, commencing in 1981 the Administration has proposed that no further funding be provided this program.

AASHTO is strongly opposed to the fiscal year 1985 budget proposal that no funds be provided for the Railroad Safety State Participation Program. With more than two-thirds of the state representatives participating and with no dissenting votes, AASHTO recently adopted a policy position regarding railroad safety which provided in part: "AASHTO strongly supports the financial role that the federal government must play in order to insure a continuing federal-state railroad safety participation program promulgated by the Rail Safety Act of 1970."

This program is described in the federal budget for fiscal year 1985 as follows:

"Grants-in-aid for Railroad Safety.—This program assists states in paying salaries and expenses incurred for state safety inspectors on a 50 percent cost sharing basis.

Expressed in this manner it is understandable why the budget also indicates that "no funds are requested in 1985." I submit, however, that if the program were properly described and understood, funding would be recommended. I suggest that a more accurate description would be as follows:

Federal/State Railroad Safety Program.—This program forms a federal/state partnership and reimburses states for 50 percent of salaries and expenses incurred for state safety inspectors assisting the federal government in its rail safety responsibilities.

This description recognizes that the federal government is receiving a grant from the states rather than erroneously stating that the federal government is providing grants-in-aid to the states.

This program is probably one of the smallest government programs from a funding standpoint. Currently it is operating with an appropriation of less than $3 million a year. This amount represents 50 percent of the annual cost incurred by the 32 states for the 101 inspectors presently engaged in the program. In an era when federal funding is typically in billions and hundreds of billions of dollars considering the possible adverse effects by terminating the funding for this program, it is not understandable why such a small program cannot be continued.

The Senate report accompanying the fiscal year 1984 Appropriation Act instructs the Department to provide a plan for the transfer of full fiscal responsibility for this program to the states. FRA responded to this request by a letter dated February 7, 1984 to Senator Mark O. Hatfield. Although the letter purports to be a plan for transferring the program to the states, it is actually an abrogation of federal safety responsibility. In essence, the "plan" provides that federal funding cease on September 30, 1984 and without support or any assurances assumes the states will retain its safety inspectors and pay the federal share of the cost for these safety inspectors.

I suggest that the Committee give the FRA plan close scrutiny. The letter to Senator Hatfield states that the course proposed "represents an equitable and workable plan for vesting the states with responsibility for their inspectors' salaries and relat-

ed expense without jeopardizing the state programs or requiring an increase in federal inspectors." I submit that FRA did not submit a plan. Rather, it submitted erroneous conclusions based upon a non-supportable survey of state safety program personnel relating to matters which they cannot control nor be in a position to speak with authority.

State safety program personnel are not in a position to know whether state funding will be provided if federal funding is terminated, yet it was they who FRA surveyed in preparing their plan. In addition, FRA cannot support the statement that termination of federal funding will not jeopardize state programs. Further, it cannot support the statement that termination of state programs will not require an increase in federal inspectors. More importantly, the FRA report continues: "Railroad safety will not be compromised in the process." There is no support for this statement.

The FRA report continues, "The effective working relationship established between the states and FRA will continue." Common sense would predict there is no support for this statement. There is, however, evidence that if no federal funding is provided the federal-state partnership will be terminated. Consequently, there will then be numerous instances of overlapping and duplication of effort between federal and state inspectors. The program was conceived in order to eliminate these same problems. It seems incongruous to return to such an undesirable situation.

FRA states, "The issue is essentially one of cost effectiveness." It explains that if state inspectors exist solely by virture of the federal funding there is a solid cost-benefit ratio. Conversely, however, if the states are willing to pay the full cost, the cost-benefit ratio to the federal government is negative. In other words, since rail safety enforcement is a responsibility of the federal government, the states assumption of this responsibility results in a favorable cost-benefit ratio to the federal government since it is receiving something at 50 percent of cost. If, however, the government could receive this value without payment no cost-benefit would be received by making payments.

The FRA plan for transferring responsibility for the program to the states is based on a telephone survey whereby state safety program personnel were asked whether the state would continue to provide rail safety inspections if no federal funding were provided. It is difficult to interpret FRA's report on the results. The survey disclosed: Of the 32 participating states 16 were categorized as "reasonably sure to continue," five states "may continue," three states "may drop out," six states "would drop out," and two states were "unable to assess." Despite six states clearly stating they would drop out, FRA unexplainably summarizes the survey stating that at least 28 of the 32 participating states would continue in the program. A more reasonable assessment of the survey results would be that the only conclusion to be drawn with any degree of certainty is that 16 of the 32 participating states are "reasonably sure to continue" if federal funding is discontinued. Considering the uncertainty of predicting what various state legislatures will do if federal funding were terminated, it appears unreasonable to assume that any state other than those "reasonably sure to continue" should be counted upon to remain in the program. One certainly shouldn't assume states will continue in the program when they indicate they "may drop out", "would drop out", or are "unable to assess".

Regardless of the accuracy of the FRA survey, it should be noted that FRA makes no plans for undertaking the inspections that would be performed by the state inspectors which FRA admits will drop out of the program. FRA states, "To the extent that any loss is incurred, it would be more than compensated for by manpower additions at the federal level as we approach the authorized ceiling of 325. These projected numbers are, in our best judgement, equal to the tasks assigned, and we do not envision the need to raise the authorized federal ceilings when the phaseout of federal funding is completed." Consdering that FRA admits that only 70 of the 101 state inspectors will remain in the program without federal funding, and the fact it has 310 inspectors currently on board, FRA has either not made provision to undertake the tasks of the departing state inspectors or it does not require all of the 325 authorized federal inspectors. In other words, if the FRA survey proves accurate there will be a shortage of safety inspectors, but if the survey proves overly optimistic there will be a critical shortage of safety inspectors.

We are presently conducting a written survey of the 13 participating states in which the safety program is within the jurisdiction of the AASHTO membership (the rail safety program for 19 participating states is under the jurisdiction of the National Association of Regulatory Utility Commissioners). In this survey state officials are specifically asked to verify what degree of participation could be anticipated if federal funding were reduced or eliminated. Unfortunately, to date not all states have responded to this questionnaire. If I may, however, I will furnish the

Committee the complete results when they are available as an addendum to this testimony. In the interim, as an example is the response from Iowa which will give the Committee an indication of the scope of our survey. It will be noted that this survey is considerably more comprehensive than the telephone survey conducted by the FRA.

The responses that have been received confirm that it is unreasonable for FRA to assume that the existing federal-state partnership developed through this progoram could continue in its present form. In addition, in all likelihood there will be a deterioration in the program caused by a lack of uniformity in administering enforcement. As pointed out by the Iowa representatives in the questionnaire attached to this testimony they would not exercise the same degree of cooperation with FRA as is now being experienced under the current financial arrangement; Iowa would consider the partnership terminated. Iowa also believes continuity across state lines would diminish as it is believed state agencies can administer the program with greater efficiency and effectiveness but also believes it is preferable that safety rules be federally based rather than state based.

In summary, Mr. Chairman, there is no economical or philosophical reason for failing to provide funds for this program. The importance of the program is far out of proportion to the required funding. This program is probably the most cost efficient and effective method for administering a national rail safety inspection program. Failure to fund this program will terminate the existing partnership between the federal and state safety inspectors, thereby reverting to the chaotic situation which existed prior to the establishment of this program. The rail safety record has been improving significantly each year for the last several years. These encouraging facts are at best only partially attributable in a small way to the Railroad Safety Participation Program. This record, however, should not be jeopardized by the failure to provide a small amount of federal funding.

[The following information was subsequently received for the record:]

AMERICAN ASSOCIATION OF STATE HIGHWAY
AND TRANSPORTATION OFFICIALS,
March 20, 1984.

Hon. JOHN C. DANFORTH,
Committee Chairman on Surface Transportation, Subcommittee on Commerce, Science, and Transportation, Room 428, Senate Office Building, Washington, D.C.

DEAR SENATOR: This is response to your letter of March 14, 1984 in which you submitted two questions pertaining to the safety authorization legislation considered during your hearings on March 9.

First you requested the results of our survey on the Railroad Safety State Participation Program. This survey was a joint undertaking by the National Conference of State Rail Officials (NCSRO) and the National Association of Regulatory Utility Commissioners (NARUC). As you are aware, the jurisdiction for rail safety is different among the states. Of the 32 states presently involved in the Railroad Safety State Participation Program, 11 are under the jurisdiction of NCSRO and 22 under NARUC. To date, I have received the results of the survey from only five of the 11 NCSRO states (Florida, Iowa, Minnesota, New York and Washington). The responses from the states are enclosed. The responses for four states have been collected for each of the questions. The response from the state of Washington could not be readily coordinated and therefore is enclosed separately.

I am informed that the NCSRO task force chairman is working closely with the counterpart from NARUC on this matter. When all of the responses have been submitted and are collated between the two organizations, I will again respond to your request.

It should be noted in the interim that the limited number of responses contradicts the assumptions made by the Federal Railroad Administration (FRA). Namely, there will be a marked reduction in the program if Federal funding is terminated as well as a cessation of the Federal/State partnership.

Secondly, you requested recommendations on ways to reduce the number of accidents at rail-highway crossings. The number of accidents at rail-highway grade crossings has decreased dramatically in recent years. At the same time, there is reason to believe that the number of accidents is not at an irreducible minimum and that further improvement can be achieved.

The reduction in rail-highway grade crossings accidents is in part due to the efforts of Operation Lifesaver. This program was initiated in 1972, by the Union Pacific Railroad and a number of community leaders in Idaho. Since that time it has spread rapidly and formed working partnerships between railroads and the states to

blend the education, engineering, and enforcement elements of grade crossing safety. In 1978 the National Safety Council responded affirmatively to the National Transportation Board recommendation to serve as national coordinator of the program. Currently 37 states participate in the program. Significantly, this program achieves the goals of private sector involvement in a program functioning at the state and local level.

I believe that this program should be expanded to include all states. To achieve this goal as rapidly as possible I recommend a limited Federal involvement. For example, in 1982 the FRA co-sponsored a seminar on grade crossing safety in Kansas City. FRA could become more active in this type of activity without an extensive financial commitment nor assuming responsibility for coordinating the program. FRA should provide this limited assistance to encourage states to join the program.

Also, I suggest that Congress direct the Secretary of Transportation to conduct a comprehensive study of the rail-highway crossing program similar to the one performed in 1972. The Highway Safety Act of 1970 mandated such a study which in large part was responsible for the adoption of Section 203 of the Highway Safety Act of 1973. As you are aware, this program has been very successful. At the same time, it appears that due to the changing conditions another study should be mandated.

This study should include an in-depth study of grade crossing accidents. For example, there have been almost 100 deaths per a year at grade crossings in recent years where the drivers went around closed gates. This study should examine human behaviorial factors in such accidents. Similarly, emphasis should be placed on attempting to understand and respond to accidents related to alcoholism and drug abuse. In addition, an examination should be made to determine if all grade crossings are necessary and to possibly recommend closings. In recent years there have been a number of programs in which grade crossings were studied from a corridor approach. It should be determined if such programs should be expanded and if so, to what degree. High speed rail has been initiated in some parts of the country and is being planned in several other parts of the country. These trains will create the necessity for a number of changes in both the engineering of grade crossings as well as public education. All of these changing factors should be examined in a Federal study.

Finally, I would suggest that an examination be made of the results of the Congressional demonstration program which included 19 projects. By definition this was to be a demonstration program and now that it is approaching completion an evaluation should be made as to the success of the program with a view of disseminating the results to other communities.

If you have any further questions or if I can be of any assistance, please do not hesitate to contact me.

Sincerely,

WILLIAM T. DRUHAN, *Program Director.*

Senator DANFORTH. Thank you very much, both of you.

Let me tell you what the problem is. We have this well known deficit in the Federal budget, and nobody takes more glee in telling us that we have to do something about it than State governments. The Governors came to Washington, you know, a couple of weeks ago and passed a resolution telling us that we had to get our deficit down. Nearly three-quarters of the State legislatures have passed resolutions demanding that the balanced budget amendment be put to a Constitutional Convention.

And it makes terrific oratory for Governors and State legislators to beat on the Federal Government about the outrageous deficits in the budget, and now the Office of Management and Budget says, well, here is a little item we can cut, and the States then say, oh, no, do not cut that.

Do you have any notion—I do not know—of any way to cut out waste?

Mr. DRUHAN. If I may comment, Mr. Chairman, I think if you want to cut the budget that could be a good political issue, but by the same token you do not want to cut safety. In this day of talking about trillion dollar deficits at $200 billion or $100 billion annually,

whatever it is, today we are talking about a program that was authorized at $2.4 million. OMB rounds things off to ten millions and hundreds of millions. We are talking about $2.4 million among 32 States.

Senator DANFORTH. Well, it is so small that those 32 States could surely pass the hat and come up with something.

Mr. DRUHAN. That was exactly Mr. Riley's point. He equated it down to an individual State basis.

Senator DANFORTH. I mean, Missouri only has three inspectors.

Mr. DRUHAN. That is correct. No State has more than eight.

Senator DANFORTH. Could Missouri not pass the hat, Charlotte?

Ms. MUSGRAVE. Since you are asking for ways to cut the Federal budget, and our State legislature last year they did pass a paper control bill, maybe you could pass the same.

Senator DANFORTH. We have one. That is my bill.

Ms. MUSGRAVE. OK. Good.

Senator DANFORTH. Senator Chiles and I. That is terrific. We have done that. But still the deficit is growing. Could Missouri not pick up just three inspectors for the good of the cause?

Ms. MUSGRAVE. We would probably be able to keep two of them, but we would not be into the track safety inspection, Senator.

Senator DANFORTH. You mean we would only lose one person?

Ms. MUSGRAVE. No; I do not know that we would only lose one, but we would keep at least two of our inspectors. But it would not be in the track safety area that we would use them. They would have to be diversified.

Mr. DRUHAN. Mr. Chairman, I would submit that you answer the question put to you in this way. Rail safety is a Federal responsibility. FRA is responsible for that and should pay the tab. What they asked for is State help. We are giving them 50 percent of the cost of their inspectors. We pay 50 percent of the State inspectors. If they do not want to pay the other 50 percent, then they can pay the whole thing. Now you have increased your deficit.

Senator DANFORTH. Well, I will think on that one.

Mr. DRUHAN. That is what it means when we drop out of the program. You either drop safety or you have picked up the entire tab.

Senator DANFORTH. Thank you very much, both of you. I appreciate your coming here.

This hearing is adjourned.

[Whereupon, at 11:35 a.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF W. GRAHAM CLAYTOR, JR., PRESIDENT, NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

Mr. Chairman and members of the Subcommittee, my name is W. Graham Claytor, Jr., and I am President of the National Railroad Passenger Corporation, also known as Amtrak. I would like to thank you for this opportunity for Amtrak to present its views on the issue of safety of operations of rail passenger service.

Amtrak has established an outstanding safety record during its twelve-year history. Rail passenger service is inherently safe and, as a result, intercity rail passenger service has always had an outstanding record in comparison to other intercity transportation modes. Building on our inherent safety advantage, Amtrak exercises the utmost care in its operations to insure that the superior record that has been established thus far will be maintained in the future.

As you know, most aspects of Amtrak's operations are subject to the standards with respect to safety of operations that are set forth in regulations of the Federal Railroad Administration and are applicable to the operation of railroad freight service in this country. A most significant exception to this general rule is the fact that passenger care are not subject to the full range of regulatory requirements that cars operated in freight service are. A considerable amount of attention has been focused in the past few years on the question of whether it would be appropriate to adopt additional new federal requirements with respect to the construction, maintenance, or operation of equipment used in rail passenger service. Amtrak has participated actively in the public discussions concerning whether any government action might be required and, if so, what action would be appropriate. Specifically, Amtrak testified in June of 1982 in hearings held by the Federal Railroad Administration on the subject of safety of railroad passenger equipment. In those hearings we submitted evidence with respect to our safety record. That record supported our firm position that there does not currently exist any significant safety problem involving the construction, maintenance, or operation of rail passenger equipment. As a result, we concluded that there was no basis for the Federal Railroad Administration to impose additional regulatory burdens on Amtrak. I am submitting [1] with my statement today a copy of Amtrak's comments to the Federal Railroad Administration in its 1982 proceeding.

In January of this year, the Federal Railroad Administration has recently submitted a report to Congress entitled "Railroad Passenger Equipment Safety." This report highlights the remarkable safety record of rail passenger service, with particular statistical evidence being presented for the last few years of operation. We believe the statistical record contained in the report is reasonably representative of the long historical experience of consistently safe operations and the lack of any significant risk to persons traveling on passenger trains specifically with respect to equipment used in operating that service. In addition to pointing out the good safety record achieved by rail passenger service, the recent FRA report refers to a 1983 report that it prepared concerning emergency procedures for training of on-board passenger train personnel and points out the extensive efforts that Amtrak has recently undertaken to deal with this aspect of safety in passenger train service.

In spite of the outstanding safety record that has been established, the Federal Railroad Administration has announced plans to conduct a further safety inquiry that will specifically address any technical or operational changes that may have an adverse effect on the future safety of rail passenger service. Amtrak does not currently foresee any such adverse impact or any basis for further regulation of the equipment used in our service. We will certainly participate actively in the hearings FRA is now planning to hold in May and in any subsequent efforts to insure that the outstanding safety record of Amtrak and other rail passenger service operations is maintained.

[1] The submission is in the committee files.

PUBLIC UTILITY COMMISSIONER OF OREGON,
Salem, Oreg., March 29, 1984.

SUMMARY ANALYSIS OF OREGON'S RAIL SAFETY PARTICIPATION PROGRAM (FEDERAL-STATE RAIL SAFETY PROGRAM)

Oregon was certified for participation in the enforcement of federal track safety standards in 1974. We were also certified for enforcement of federal freight car safety standards in 1976. Our equipment inspectors were certified in air brakes and safety appliances in 1983. We are currently applying for participation in the operating practices area.

Certified states conduct the routine inspection surveillance activities in their states with state personnel enforcing federal rail safety standards. In turn, the state funds the program 50 percent and federal government funds the remaining 50 percent.

1. Cost of Program:

The total cost of Oregon's program for fiscal year 1985, including the supervisory cost and other overhead, is estimated at nearly $300,000 (one-half funded by the federal government). Thus, the annual cost to the federal government during this next year, will be approximately $150,000.

2. Employes Involved:

We employ four full-time track and equipment inspectors as follows:

H. L. Fegles, Track Inspector, formerly a Roadmaster (Maintenance Supervisor) for Burlington Northern Railroad.

R. N. Shankle, Track Specialist, formerly a Roadmaster for Southern Pacific directly responsible for maintenance of main line tracks between Eugene, California; prior to that the Toledo Branch.

L. C. Robertson, Equipment Inspector, formerly Assistant Trainmaster-Mechanical, Southern Pacific, responsible for maintenance of equipment in Portland.

C. D. Fogus, Equipment Specialist, thirteen years experience in rail freight car repair work, Burlington Northern, while working his way through college.

Our staff is exceptionally well qualified and has earned the respect of the railroad personnel with whom they work.

3. Impact on Level of Effort in Oregon if State Involvement is Terminated:

a. Track Program: There would be significantly less inspection and enforcement activity in Oregon if state involvement is terminated. FRA has one track inspector to cover Oregon, parts of Washington, California, Idaho, and Alaska. It is obvious that if Oregon and Washington (which each employ two track inspectors now) drop out of the program, the federal government would have to add several inspectors to maintain the same level of effort.

Our inspectors currently inspect each mile of rail trackage in Oregon annually (2,960 main and branch line miles; 4,300 rail miles). Our people also inspect all main line trackage used by Amtrak twice a year.

Activity Summary: Track. Defects written up by our track inspectors during the past 9½ years between July 1974 to January 1984 are as follows:

Main line	1,733
Branch lines	3,593
Yard track	4,235
Records	1,899

(Defects are conditions which do not meet federal standards.)

Safety record on Oregon since 1978 is as follows: Number of derailments per year:

1978	139
1979	126
1980	97
1981	64
1982	59
1983	46

Safety record nationally since 1978 is as follows: Derailments per million train miles:

9.3 in 1978;
5.9 in 1981 (latest available statistics).

b. Equipment Program: Again, the inspection effort would be significantly reduced if state participation were terminated. FRA has seven motive power and equipment inspectors in the eight-state region which includes Oregon (two in Seattle, one in Spokane, one in Portland, one in Montana, one in North Dakota, and one in Idaho).

These people also inspect locomotives and power brakes in addition to freight cars. Our inspectors have been trained and qualified in power brakes and safety appliances and trained in locomotives, but have yet to be certified. Washington equipment inspectors have been trained and certified likewise.

Our inspectors currently inspect approximately 27,000 rail cars per year with special emphasis on cars carrying hazardous materials. We inspected 618 cars containing hazardous materials in the last year.

In the last five years we have instituted a program monitoring and attempting to reduce the rate of bad order cars found in trains okayed by rail personnel for departure. We have observed a steady decrease from 6.3 percent in 1979 to 4.6 percent in 1983.

4. Assistance in FRA Safety Assessments:

Beginning in 1982, FRA began a program of safety assessments of railroads. These assessments are inspections conducted in greater detail than routine activities. Oregon participated in a systems safety assessment of Southern Pacific, making nearly all of the track assessment inspections in the state. Our equipment inspectors worked in pairs with FRA personnel to investigate the railroad's mechanical activities. In addition, the agency's word processing center was instrumental in reducing the report writing time.

We participated in assessments of Burlington Northern and Union Pacific also.

5. Special Areas of Concern:

a. Physicial Condition of Southern Pacific—Disinvestment: There was speculation some time ago about Southern Pacific's potential difficulty in raising adequate capital for its railroad operations; however, its pending merger with the Santa Fe, if approved, should place it in a much better competitive position with respect to BN and UP. We believe that routine monitoring of track condition is advantageous to the state in spotting the onset of potential long-term problems related to railroad disinvestment.

b. Routine Maintenance During Recessions: As an adjunct to the above, Southern Pacific has had a history of cutting back, on maintenance on both its track and equipment personnel during economic recessionary periods. Burlington Northern management has instituted changes that may negatively impact railroad maintenance as well. We have been monitoring Southern Pacific and Burlington Northern track and equipment carefully during this period.

c. Hazardous Materials: By controlling our own inspection force we can assure that areas of major exposure to potential damage from derailments of cars containing hazardous materials can be closely monitored for compliance with relevant safety standards. See Section 3.b above.

d. Support for Programs and Projects Vital to Oregon: See Section 7 below on side benefits realized through participation in this program—examples where having track and equipment expertise in state government has been valuable to use in assisting other agencies of state and local government in various programs and projects.

6. Special Safety Problems Detected:

Over the years our track inspectors have found a number of serious defects during inspections which, if not immediately corrected, could very well have resulted in serious derailments. (Broken rails are a typical example.) Also, our inspectors have found serious defects in freight cars loaded with hazardous material okayed for departure by rail personnel (such as cracked or broken wheels and defective brake gear), which also could have resulted in derailments en route.

In a special case where federal standards did not apply, our track inspector, Dick Shankle, was able to convince Southern Pacific management to make extensive repairs to Tunnel 19 on the Coos Bay Branch. The condition of the tunnel had deteriorated considerably over the years. Major repair work had been included, then dropped, from several consecutive budgets until the hazard became too great to ignore.

On the heals of an accident involving a Burlington Northern freight locomotive which plunged into the Willamette River in Portland, our track inspectors are studying all drawbridge locations in Oregon to determine the proper safety procedures in effect or needed to prevent recurrence of such an accident.

7. Side Benefits to State:

By having track and equipment expertise in state government—melted in with many other areas of expertise in railroading—we have been able to provide valuable assistance to other state and local agencies in several areas:

a. Assistance to Harney County: Harney County has been troubled by rising waters in Malheur Lake which resulted in Union Pacific placing an embargo on its Oregon Eastern Branch to Burns. We personally inspected the threatened area and

prepared an estimate of the cost and necessary materials to maintain the line in view of the rising water situation. We will be meeting with county and railroad officials in April to see what can be done to prevent the permanent loss of rail service to the area.

b. Restoration of Service to Myrtle Point: We were able to immediately send an experienced person to the scene as soon as we were aware of flooding which resulted in rail service to Myrtle Point being suspended indefinitely. Our track specialist was personally familiar with track construction procedures and with the maintenance history of that particular line. He made an estimate of the amount of damage and the cost to restore service. He met with local business people and assisted Oregon DOT and its assessment of the level of funding needed to rebuild the line with federal funding assistance.

c. General Assistance to Oregon Department of Transportation: Our track inspectors have assisted ODOT's rail plan staff in assessing the condition of several branch lines being considered for abandonment, verifying railroad cost estimates and assisting the ODOT in determining whether or not the lines should be retained and upgraded with federal rail assistance funds.

d. Coal Export Study—Astoria Line: Our track people provided valuable information helping us develop the data necessary to document the amount of work and the cost involved to upgrade Burlington Northern's Astoria Line significantly to handle regular unit coal trains. This is a project of special interest to the Governor.

e. Estimated Cost of Rebuilding Certain Rail Lines in the Portland Area for Use By Light Rail Transit: Our track inspectors played an important role in our 1974 study of rail corridors in the Portland area with potential for mass transportation use.

f. Special Track and Equipment Study of the Toledo Branch: A few years ago the Toledo Branch of Southern Pacific was experiencing frequent derailments. Both the condition of the track and the type of equipment being operated over it were involved. Our track and equipment and forces participated in this special study to determine the cause of derailments and the remedies.

g. Assistance to Local Governments: Our track inspectors have assisted units in local government as well, such as the Beaverton Railroad Relocation Project. Estimates of track upgrading costs, to compare against railroad—provide estimates, have been useful to local government in analyzing options available.

GEORGE E. HARDY, Jr.,
Administrator, Rail Safety Division.

Attachment.

COMMENTS ON FRA ADMINISTRATOR RILEY'S LETTER REPORT TO SENATOR MARK O. HATFIELD, FEBRUARY 7, 1984

INTRODUCTION

We are not sure Administrator Riley fully understands the question asked by the Senate Committee on Appropriations. In its July 14, 1983, report, page 61 (see attachment), the committee asked FRA to report on how to transfer the rail safety program to the states without jeopardizing state safety programs or requiring more federal inspectors. It appears Mr. Riley's report shows how he proposes to make the states pay the full cost or withdraw from the rail safety program.

1. STATE PROGRAMS PRIOR TO 1970

Administrator Riley notes that "thirteen of the participating states had established state inspection forces prior to the initiation of the program in 1970." He then goes on to state, "In these instances, the program simply subsidized an existing activity, and there is no reason to believe that these states would abandon their program should the Federal subsidies be discontinued."

This is probably false and is certainly very misleading. Prior to 1970, there were no federal track and equipment standards, so any programs underway in the states in those areas involved enforcement of state promulgated rules and regulations. When the federal government pre-empted the field, it assumed primary responsibility for this area of railroad safety. Since the states are no longer in control of this type of regulation, it is strange that the Administrator would now be talking about "abandoning their programs." The former state programs no longer exist. The states are now contributing 50 percent toward fulfillment of a federal responsibility. Administrator Riley seems to miss the whole point of the state participation concept.

Be that as it may, Riley's comment is extremely misleading. We would be surprised if there were thirteen states involved in track and equipment safety standard enforcement prior to 1970. None of the west coast states were involved (including all states west of the Rocky Mountains). Speaking for Oregon alone, we had an active rail safety program in 1970, consisting primarily of crossing and railroad employe safety activities, which continues today. None of these activities have been funded by the federal government. Our totally non-federal rail safety forces numbered six in 1970 and twelve FTE positions today. No federal money is subsidizing any of these people. Administrator Riley may not be aware of a key provision of the 1970 Act. Section 206(d) clearly requires the participating states to exceed their pre-1970 railroad safety expenditure level to qualify for federal funding assistance in enforcing federal safety standards. This section says in part:

"No such payment may be made unless the State agency making application under this subsection gives assurances satisfactory to the Secretary that the State agency will provide the remaining cost of such a safety program and that the aggregate expenditures of funds of the State exclusive of Federal grants for the safety program will be maintained at a level that does not fall below the average level of such expenditures for the last two fiscal years preceding the date of enactment of this title."

In addition, FRA should be fully aware states have exceeded the 1970 expenditures since annual grant application form, page V3, requires certification from each state as to what its expenditures were before 1970 (see attachment).

Oregon's rail safety budget in 1970 was approximately $75,000. Approximately three FTE positions were involved primarily in rail safety activities, with no involvement at all in track or equipment inspection. Today, we have eleven full-time employes exclusively involved in railroad safety, none of which are funded at all by FRA with an additional 1.4 FTE supervisory positions not funded by FRA, not including secretarial or clerical staff. Our full-time rail safety force, funded 50 percent by FRA, numbers 4 positions, plus 0.6 FTE for supervision. These forces would be drastically cut or totally eliminated if the 50 percent FRA funding is withdrawn.

Clearly, federal funds have not subsidized Oregon's program to maintain existing activities; in fact, Oregon's program has grown both through state expenditures and federal funds independently. FRA's description to Congress that state participation program has siphoned off money to pre-existing state activities is a gross inaccuracy which we find intolerable.

2. SHIFTING COSTS BACK TO THE STATES

FRA's reasoning is seriously flawed. Perhaps in relationship to the huge federal budget, the cost of the rail safety program to each individual state is small. However, this goes back to the basic rationale for the program. Federal funding for state inspection is cost-effective for the federal government. The program is a federal responsibility which the states are helping to fund at 50 percent, not the other way around.

3. SIMILAR TO 2 ABOVE

FRA has staffed its safety effort without regard to the presence of state inspectors. This is perhaps why the program has not been as cost-effective for the federal government as it should be. Otherwise, FRA would not consider the need for additional staff. The real reason FRA is not concerned with state funding is that it has been protective of its own staff levels and its perceived prerogatives from the beginning. Now, it appears FRA is planning for contingency, expecting a large number of states to withdraw, but at the same time, telling Congress it will not happen. If FRA's ceiling of 325 is sufficient for the national railroad safety effort, then something appears to be unnecessary:

a. FRA ceiling is too high, or

b. The state program is totally unnecessary.

Apparently, FRA figures show: 310 federal inspection personnel; 102 state inspectors; 15 additional federal inspectors by December 31, 1984; total 427.

Assuming FRA's ceiling was derived considering state participation, if the program is terminated and any states withdraw, FRA would be short an equivalent number of inspector positions. If one were to assume all states were to withdraw, FRA would need an additional 102 inspectors, funded 100 percent with federal funds. For example, the base salary for an FRA inspector (GS 12) is about $31,000 per year, plus six step increments topping out at $40,300 per year. If one were to assume 33 percent of salary cost for fringe (Oregon's fringe rate) and another 33 percent to cover supervision, secretarial support, office rental, and travel expenses

(probably very low), it would cost approximately $54,835 per year at the base salary per inspector. If all states drop out and FRA was to fill the void with federal inspectors at the base salary, it would cost the federal government at least $5,593,170 to replace the state inspectors. At the top of grade, the same inspectors would cost $71,286 annually per inspector or over $7 million for the 102 inspectors each year. Therefore, the state program at a cost of $2.4 million in 1984, including state management, overhead, and travel, indeed is cost-effective.

Administrator Riley seems to be saying that now the state participation program has come "of age," it should be dropped. This has been viewed as typical strategy of federal agencies to get states involved, then leave them high and dry. At the outset, the states expressed concern that FRA might drop the program in the future. Some states specifically stayed out of the program to watch FRA's behavior. Now that the majority of the states are in, FRA wants to pull the rug out.

FRA's action is ironic. At this time, FHWA is embarking on an $8,000,000 program and encouraging the states to participate in motor carrier safety on a 80 federal/20 state split. Also related is the gas pipeline safety program. States participating in that program report federal DOT Office of Pipeline Safety officials are much easier to deal with than those in FRA. This may be because there was no pre-existing federal inspection force to protect in gas pipeline or highway safety areas.

4. SURVEYS OF THE STATES

FRA says it has conducted two surveys during the last year. We are aware of only one FRA-conducted survey. It was over the telephone, 5 to 10 minutes in length, during which local FRA officials asked leading questions.

At the present time, NCSRO (*National Conference of State Railway Officials*) and NARUC (*National Association of Regulatory Commissioners*) are conducting a thorough survey of all states participating in the ERA rail safety program. While survey results are not yet complete, the 23 NARUC member states results have been tabulated. Of the 23, eleven have reported that they were not surveyed by FRA at all with respect to probable impact of eliminating or reducing the 50 percent federal share.

It is apparent FRA's survey, to the extent it was performed, was a very shipshod effort. FRA simply does not care whether or not the states are involved. It has always been a reluctant partner in the state participation program. It appears to the states that FRA views state inspectors as intruders on its own turf.

In summary, FRA's report is very vague and thin. The report is void of meaningful details and statistics on which to base any rational decision and relies on assumptions, generalizations, and unconfirmable statements. In short, we question FRA's survey results and the report submitted to Congress.

Attachments.

REPORT No. 98-179

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATION BILL, 1984

JULY 14 (legislative day, JULY 11), 1983.—Ordered to be printed

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MR. ANDREWS, from the Committee on Appropriation, submitted the following

REPORT

[To accompany H.R. 3329]

The Committee on Appropriations, to which was referred the bill (H.R. 3329) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1984, and for other purposes, reports to the Senate with various amendments, and presents herewith information relative to the changes recommended.

AMOUNTS IN NEW BUDGET (OBLIGATIONAL AUTHORITY) FOR FISCAL YEAR 1984

Amount of bill passed by House	$11,299,897,225
Amount of bill as reported to Senate	10,855,555,225
Amount of budget estimates, 1984	10,913,472,025

The Committee recommends a $28,900,000 program level for the railroad safety program. This is $2,386,000 more than the budget request and $2,400,000 more than that recommended by the House.

These funds are intended to be distributed as follows:

	Fiscal year 1984 estimate	Recommended in the House bill	Committee recommendations
Federal enforcement (field inspectors)	$22,161,000	$22,161,000	$22,161,000
Permanent positions	(379)	(379)	(379)
Grants-in-aid for railroad safety			$2,400,000
Automated track inspection			
Regulation and administration	$4,353,000	$4,339,000	$4,339,000
Permanent positions	(66)	(66)	(66)
Total appropriation	26,514,000	$26,500,000	$28,900,000

FEDERAL ENFORCEMENT PROGRAM

The Federal enforcement program provides for the salaries and related expenses for a force of Federal safety inspectors located throughout the United States. These inspectors investigate and inspect rail carriers' property and operating practices to determine compliance with Federal rail safety rules. They also conduct railroad accident investigations. The Committee recommends the budget request of $22,161,000 to support a field staff of 325 professional and 54 clerical support positions.

GRANTS-IN-AID FOR RAILROAD SAFETY

The rail safety grants-in-aid were authorized by section 206 of the Federal Safety Railroad Safety Act of 1970. The act provided for creation of what is essentially a Federal program to improve rail safety. To achieve this goal, the act relies upon a cooperative Federal-State partnership in which willing States implement federally-established rail safety standards.

The 1970 Rail Safety Act provides that in return for conducting comprehensive rail safety programs under the auspices for the Secretary of Transportation, States are to receive Federal funds of up to 50 percent of their programs' cost, subject to the Secretary's approval.

This provision of such financial assistance on a matching basis to State agencies reduces the need for a large Federal field staff and thereby permits Congress to implement its national rail safety program for less than it would otherwise cost the Department of Transportation to assume the entire financial burden.

The Committee recommends that $2,400,000 be appropriated for these grants. This amount is the same as the fiscal year 1983 level. There was no budget request or House allowance.

The Department is instructed to provide to the Committee, by January 1, 1984, a plan for the transfer of this program to the States in such a way as not to jeopardize State safety programs, or require an increase of Federal inspectors.

CERTIFICATIONS

APPLICATION FOR CERTIFICATION/AGREEMENT

(1) ☐ The state agency certifies that it has the capabilities to conduct the investigative and surveillance activities prescribed by the Administrator for the ( ) track, ( ) freight car, and/or ( ) other area of the safety program.

(2) ☐ The state agency certifies that it will provide — man-years of effort to conduct investigative and surveillance activities prescribed by the Administrator with respect to 49 CFR 213.

(3) ☐ The state agency certifies that it will provide — man-years of effort to conduct investigative and surveillance activities prescribed by the Administrator with respect to 49 CFR 215.

(4) ☐ The state agency certifies that it will provide — man-years of effort to conduct investigative and surveillance activities prescribed by the Administrator with respect to 49 CFR ——.

(5) ☐ The state agency certifies that it has furnished a copy of the Federal Regulations for the ( ) track, ( ) freight car, ( ) and/or other safety area.

APPLICATION FOR FEDERAL FUNDING

(6) ☐ The state agency certifies that it will provide the funds necessary to finance all costs in excess of Federal payments, and the aggregate expenditure of state funds (exclusive of Federal payments) for railroad safety programs will be maintained at a level which does not fall below the average level of expenditures set forth in paragraph (5) below or previously provided to the FRA.

(7) ☐ The state agency certifies that the average level of expenditures by the state for railroad safety programs during the two fiscal years immediately preceding October 16, 1970, amounted to $——— per year.

(8) ☐ The state agency certifies that its Financial Management System satisfies the requirements of Attachment G, OMB Circular A–102.

(9) ☐ The state agency certifies that its procurement standards comply with Attachment O of OMB Circular A–102.

I hereby assure and certify to the above statements and to the assurances shown on page V–1.

State or Commonwealth of
State Agency

By
Title

Date:

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